



IOWA ADMINISTRATIVE BULLETIN

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NUMBER 1
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PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Schedule for Rule Making 2008

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 26 '07	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08
Jan. 11	Jan. 30	Feb. 19	Mar. 5	Mar. 7	Mar. 26	Apr. 30	July 28
Jan. 25	Feb. 13	Mar. 4	Mar. 19	Mar. 21	Apr. 9	May 14	Aug. 11
Feb. 8	Feb. 27	Mar. 18	Apr. 2	Apr. 4	Apr. 23	May 28	Aug. 25
Feb. 22	Mar. 12	Apr. 1	Apr. 16	Apr. 18	May 7	June 11	Sep. 8
Mar. 7	Mar. 26	Apr. 15	Apr. 30	May 2	May 21	June 25	Sep. 22
Mar. 21	Apr. 9	Apr. 29	May 14	***May 14***	June 4	July 9	Oct. 6
Apr. 4	Apr. 23	May 13	May 28	May 30	June 18	July 23	Oct. 20
Apr. 18	May 7	May 27	June 11	June 13	July 2	Aug. 6	Nov. 3
May 2	May 21	June 10	June 25	***June 25***	July 16	Aug. 20	Nov. 17
May 14	June 4	June 24	July 9	July 11	July 30	Sep. 3	Dec. 1
May 30	June 18	July 8	July 23	July 25	Aug. 13	Sep. 17	Dec. 15
June 13	July 2	July 22	Aug. 6	Aug. 8	Aug. 27	Oct. 1	Dec. 29
June 25	July 16	Aug. 5	Aug. 20	***Aug. 20***	Sep. 10	Oct. 15	Jan. 12 '09
July 11	July 30	Aug. 19	Sep. 3	Sep. 5	Sep. 24	Oct. 29	Jan. 26 '09
July 25	Aug. 13	Sep. 2	Sep. 17	Sep. 19	Oct. 8	Nov. 12	Feb. 9 '09
Aug. 8	Aug. 27	Sep. 16	Oct. 1	Oct. 3	Oct. 22	Nov. 26	Feb. 23 '09
Aug. 20	Sep. 10	Sep. 30	Oct. 15	Oct. 17	Nov. 5	Dec. 10	Mar. 9 '09
Sep. 5	Sep. 24	Oct. 14	Oct. 29	Oct. 31	Nov. 19	Dec. 24	Mar. 23 '09
Sep. 19	Oct. 8	Oct. 28	Nov. 12	***Nov. 12***	Dec. 3	Jan. 7 '09	Apr. 6 '09
Oct. 3	Oct. 22	Nov. 11	Nov. 26	***Nov. 26***	Dec. 17	Jan. 21 '09	Apr. 20 '09
Oct. 17	Nov. 5	Nov. 25	Dec. 10	***Dec. 10***	Dec. 31	Feb. 4 '09	May 4 '09
Oct. 31	Nov. 19	Dec. 9	Dec. 24	***Dec. 24***	Jan. 14 '09	Feb. 18 '09	May 18 '09
Nov. 12	Dec. 3	Dec. 23	Jan. 7 '09	Jan. 9 '09	Jan. 28 '09	Mar. 4 '09	June 1 '09
Nov. 26	Dec. 17	Jan. 6 '09	Jan. 21 '09	Jan. 23 '09	Feb. 11 '09	Mar. 18 '09	June 15 '09
Dec. 10	Dec. 31	Jan. 20 '09	Feb. 4 '09	Feb. 6 '09	Feb. 25 '09	Apr. 1 '09	June 29 '09
Dec. 24	Jan. 14 '09	Feb. 3 '09	Feb. 18 '09	Feb. 20 '09	Mar. 11 '09	Apr. 15 '09	July 13 '09

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
3	Friday, July 11, 2008	July 30, 2008
4	Friday, July 25, 2008	August 13, 2008
5	Friday, August 8, 2008	August 27, 2008

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, July 8, 2008, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Agenda published in the June 18, 2008, Iowa Administrative Bulletin.

ELDER AFFAIRS DEPARTMENT[321]

AAA—waiver and contested case procedure, 4.3(8), 4.6(1), 4.7, 4.9(3), 4.11(2), 4.14 Filed **ARC 6899B** 7/2/08
 AAA planning and administration, 6.10(4), 6.15(1), 6.18 Filed **ARC 6907B** 7/2/08
 AAA service deliver — family caregiver program, 7.1; rescind 7.25 Notice **ARC 6905B** 7/2/08
 Resident advocate committees, ch 9 Filed **ARC 6896B** 7/2/08
 Iowa family caregiver support program, ch 14 Notice **ARC 6919B** 7/2/08
 Case management program for frail elders, amendments to ch 21 Filed **ARC 6908B** 7/2/08
 Iowa senior living program, 28.3, 28.6, 28.9, 28.11 Notice **ARC 6918B** 7/2/08

ENVIRONMENTAL PROTECTION COMMISSION[567]

Natural Resources Department[561]"umbrella"

Quorum and voting requirements, 1.6 Notice **ARC 6922B**, also Filed Emergency **ARC 6921B** 7/2/08
 NPDES general permit fees, 64.16(3)"a" Filed **ARC 6891B** 7/2/08
 Underground storage tanks—technical standards and corrective action, 135.2,
 135.8(1), 135.9(4), 135.10, 135.12, 135.18, Appendix B Filed **ARC 6892B** 7/2/08

HUMAN SERVICES DEPARTMENT[441]

Federal or state earned income tax credit (EITC), 41.26(1), 41.27(1), 75.56(1), 75.57(7),
 170.2(1) Filed **ARC 6877B** 7/2/08
 Income exemption for FIP eligibility, 41.27(7)"ak" Notice **ARC 6871B** 7/2/08
 Emergency assistance, amendments to ch 58 Notice **ARC 6920B** 7/2/08
 Emergency assistance eligibility and benefit limits, 58.4(3), 58.5 Filed Emergency **ARC 6878B** 7/2/08
 Annual update of statewide average cost of nursing facility services, 75.23(3), 75.24(3)
Filed Emergency **ARC 6879B** 7/2/08
 Medicaid—continuous eligibility for children, 75.54(4)
Notice **ARC 6886B**, also Filed Emergency **ARC 6884B** 7/2/08
 Medicaid service providers—qualifications of AEA, local education agency and infant and
 toddler program personnel, 77.28, 77.43(1), 77.44(1), 78.32 Filed **ARC 6887B** 7/2/08
 Reimbursement—outpatient hospital services, 78.3(5), 78.31(2), 79.1
Filed Emergency After Notice **ARC 6889B** 7/2/08
 Home health agency care for maternity patients and children, 78.9(9) Notice **ARC 6873B** 7/2/08
 Medicaid reimbursement rates, amendments to chs 78, 79, 83
Notice **ARC 6901B**, also Filed Emergency **ARC 6900B** 7/2/08
 IowaCare—retroactive eligibility, 92.6(2) Filed Emergency After Notice **ARC 6893B** 7/2/08
 Social service providers — increase in reimbursement rates, 150.3(5)"p"
Notice **ARC 6903B**, also Filed Emergency **ARC 6902B** 7/2/08
 Reimbursement rates for foster family care, 156.6(1)
Notice **ARC 6910B**, also Filed Emergency **ARC 6906B** 7/2/08
 Child care expansion program, ch 168 Filed **ARC 6895B** 7/2/08
 KinderTrack; child care assistance policy, 170.1, 170.2(1), 170.3, 170.4(7) Notice **ARC 6876B** 7/2/08
 Foster care service providers—increase in reimbursement rates, 185.112(1)"k"
Notice **ARC 6912B**, also Filed Emergency **ARC 6911B** 7/2/08
 Department visits to children in foster care, 202.3(3), 202.11 Notice **ARC 6914B** 7/2/08

INSURANCE DIVISION[191]

Commerce Department[181]"umbrella"

Worker's compensation insurance rate filing procedures, ch 60 Notice **ARC 6909B** 7/2/08
 Determining reserve liabilities for preneed life insurance, ch 95 Notice **ARC 6888B** 7/2/08
 Sales of cemetery merchandise, funeral merchandise and funeral services, chs 100 to 106
Notice **ARC 6904B** 7/2/08

IOWA FINANCE AUTHORITY[265]

Military service member home ownership program, ch 27
Notice **ARC 6915B**, also Filed Emergency **ARC 6913B** 7/2/08

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Covered wages, death benefits and beneficiaries, QDRO, amendments to chs 6, 14, 16
Notice **ARC 6917B** 7/2/08

PHARMACY BOARD[657]

Public Health Department[641]"umbrella"

Pharmacy technicians, 3.1, 3.5, 3.10(2), 3.10(3)

Notice **ARC 6868B**, also Filed Emergency **ARC 6867B** 7/2/08

Prescribers practicing in hospitals—use of generic prescription blanks or forms, 8.11(5)

Notice **ARC 6872B** 7/2/08Sterile compounding practices, amendments to ch 13 Notice **ARC 6874B** 7/2/08

Centralized prescription filling and processing, 18.2, 18.3(2)"c," 18.3(3)

Notice **ARC 6870B**, also Filed Emergency **ARC 6869B** 7/2/08**PUBLIC SAFETY DEPARTMENT[661]**

State building code—manufactured housing support and anchorage systems, 16.622, 16.625,

16.626, ch 322 Notice **ARC 6897B**, also Filed Emergency **ARC 6898B** 7/2/08

Records retention manual; release of official photographs of employees, 25.11, 25.15

Notice **ARC 6916B** 7/2/08Fire fighter training and certification, 251.202 Notice **ARC 6894B** 7/2/08

State building code—energy conservation in construction, 300.4(1), 300.6(4), 303.1 to 303.3

Notice **ARC 6883B**, also Filed Emergency **ARC 6885B** 7/2/08

Manufactured housing installer certification, ch 374

Notice **ARC 6880B**, also Filed Emergency **ARC 6881B** 7/2/08**RACING AND GAMING COMMISSION[491]**

Inspections and Appeals Department[481]"umbrella"

Licensing, harness racing, gambling games, accounting and cash control, amendments to chs

6, 9, 11 and 12 Filed **ARC 6866B** 7/2/08**TRANSPORTATION DEPARTMENT[761]**Keep Iowa beautiful program, 122.2, 122.5(4) to 122.5(10), 122.7(3) Filed **ARC 6890B** 7/2/08**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]**County grant program for veterans, amendments to ch 12 Filed Emergency **ARC 6865B** 7/2/08Vietnam conflict veterans bonus, 13.1(1) Filed Emergency **ARC 6882B** 7/2/08**WORKERS' COMPENSATION DIVISION[876]**

Workforce Development Department[871]"umbrella"

Payroll tax tables, 8.8 Filed Emergency **ARC 6875B** 7/2/08

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Film, television and video project promotion program, 36.2, 37.7, 36.8(2) IAB 6/18/08 ARC 6841B (See also ARC 6840B)	ICN/Mail Conference Room 200 E. Grand Ave. Des Moines, Iowa	July 10, 2008 3:30 to 4:30 p.m.
EDUCATION DEPARTMENT[281]		
Use of physical restraints and physical confinement or detention, 103.1, 103.3, 103.6 to 103.8 IAB 6/18/08 ARC 6838B (ICN Network)	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	July 8, 2008 1 to 3 p.m.
	Keystone AEA 1 1400 2nd St. NW Elkader, Iowa	July 8, 2008 1 to 3 p.m.
	Room 106, Activity Center North Iowa Area Community College 500 College Dr. Mason City, Iowa	July 8, 2008 1 to 3 p.m.
	Loess Hills AEA 13 24997 Hwy. 92 Council Bluffs, Iowa	July 8, 2008 1 to 3 p.m.
	Southern Prairie AEA 15 2814 N. Court St. Ottumwa, Iowa	July 8, 2008 1 to 3 p.m.
	Turner Room, Green Valley AEA 14 1405 Lincoln Creston, Iowa	July 8, 2008 1 to 3 p.m.
	Room 206, Northwest AEA 12 1520 Morningside Ave. Sioux City, Iowa	July 8, 2008 1 to 3 p.m.
	Revere Room, Grand Wood AEA 10 4401 6th St. SW Cedar Rapids, Iowa	July 8, 2008 1 to 3 p.m.
	Room 101 Pocohontas Area High School 205 2nd Ave. NW Pocohontas, Iowa	July 8, 2008 1 to 3 p.m.
	Louisa Room Mississippi Bend AEA 9 729 21st St. Bettendorf, Iowa	July 8, 2008 1 to 3 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Quorum and voting requirements, 1.6 IAB 7/2/08 ARC 6922B (See also ARC 6921B herein)	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 22, 2008 10 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ENVIRONMENTAL PROTECTION COMMISSION[567] (cont'd)		
Air quality, amendments to chs 20, 22, 23, 25, 33 IAB 6/4/08 ARC 6826B	Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	July 7, 2008 1 p.m.
Closure of existing MSWLF units, 113.2(8) IAB 6/4/08 ARC 6828B	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	July 10, 2008 12 noon
INSURANCE DIVISION[191]		
Workers' compensation insurance rate filing procedures, ch 60 IAB 7/2/08 ARC 6909B	330 Maple St. Des Moines, Iowa	July 30, 2008 10 a.m.
Determining reserve liabilities for preneed life insurance, ch 95 IAB 7/2/08 ARC 6888B	330 Maple St. Des Moines, Iowa	July 22, 2008 10 a.m.
Sales of cemetery merchandise, funeral merchandise and services, chs 100 to 106 IAB 7/2/08 ARC 6904B	330 Maple St. Des Moines, Iowa	July 22, 2008 2 p.m.
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]		
IPERS benefits, 6.3, 14.3(1), 14.4, 14.16 IAB 7/2/08 ARC 6917B	7401 Register Dr. Des Moines, Iowa	July 22, 2008 9 a.m.
LABOR SERVICES DIVISION[875]		
Wind tower lifts, amendments to chs 71, 72, 75, 76 IAB 6/18/08 ARC 6853B (See also ARC 6852B)	Stanley Room 1000 East Grand Ave. Des Moines, Iowa	July 9, 2008 10 a.m. (If requested)
MEDICINE BOARD[653]		
Alternate board members, 1.1, 1.3, 25.18(1), 25.24(1) IAB 6/18/08 ARC 6858B	Suite C 400 SW 8th St. Des Moines, Iowa	July 8, 2008 3 p.m.
Verification of physician licensure; fees; 8.5(1), 8.6 IAB 6/18/08 ARC 6862B	Suite C 400 SW 8th St. Des Moines, Iowa	July 8, 2008 3 p.m.
Compliance with audits, 11.4(1), 23.1 IAB 6/18/08 ARC 6860B	Suite C 400 SW 8th St. Des Moines, Iowa	July 8, 2008 2:30 p.m.
Right to appear personally or by attorney at hearings, 25.1 25.18(5) IAB 6/18/08 ARC 6861B	Suite C 400 SW 8th St. Des Moines, Iowa	July 8, 2008 2:30 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
PROFESSIONAL LICENSURE DIVISION[645]		
Sign language interpreters and transliterators, rescind chs 360, 364; amend chs 361 to 363 IAB 6/18/08 ARC 6845B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	July 8, 2008 9 to 9:30 a.m.
PUBLIC SAFETY DEPARTMENT[661]		
Manufactured housing support and anchorage systems, 16.622, 16.625, 16.626, ch 322 IAB 7/2/08 ARC 6897B (See also ARC 6898B herein)	First Floor Public Conf. Rm. 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	August 12, 2008 10 a.m.
Records retention manual; employee photographs, 25.11, 25.15 IAB 7/2/08 ARC 6916B	First Floor Public Conf. Rm. 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	August 12, 2008 8 a.m.
Fire fighter certification standards, 251.202 IAB 7/2/08 ARC 6894B	First Floor Public Conf. Rm. 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	August 12, 2008 8:30 a.m.
Energy conservation in construction, 300.4(1), 300.6(4), 303.1 to 303.3 IAB 7/2/08 ARC 6883B (See also ARC 6885B herein)	First Floor Public Conf. Rm. 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	August 12, 2008 10:30 a.m.
Manufactured housing installer certification, ch 374 IAB 7/2/08 ARC 6880B (See also ARC 6881B herein)	First Floor Public Conf. Rm. 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	August 12, 2008 9 a.m.
REAL ESTATE COMMISSION[193E]		
Grant committee operations; grant applications and awards, chs 22, 23 IAB 6/18/08 ARC 6844B	2nd Floor Professional Licensing Conf. Rm. 1920 Hulsizer Rd. Ankeny, Iowa	July 8, 2008 10 a.m.
UTILITIES DIVISION[199]		
Wind energy tax credits, 15.18(1), 15.20 IAB 6/18/08 ARC 6847B	Board Hearing Room 350 Maple St. Des Moines, Iowa	July 15, 2008 10 a.m.
VETERINARY MEDICINE BOARD[811]		
Veterinary medicine, chs 1 to 7, 9 to 14 IAB 6/18/08 ARC 6863B	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 9, 2008 2 p.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CITIZENS’ AIDE[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Bureau[193]
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ADMINISTRATIVE SERVICES DEPARTMENT**Public Notice**

NOTICE OF OFFICIAL PUBLICATION RATE INCREASE FOR THE FISCAL YEAR
COMMENCING JULY 2, 2008, AND ENDING JUNE 30, 2009

In accordance with Iowa Code section 618.11, Iowa Department of Administrative ITE Infrastructure Services/Printing Administrator hereby publishes the lineage rate* for newspaper publications of any order, citation, or other publication required or allowed by law (also known as official publications) for the period commencing on July 2, 2008, and ending on June 30, 2009, in the following amounts:

* Lineage rate: "...each line of eight point type two inches in length, or its equivalent." (Iowa Code section 618.11.)

One insertion = 42.6 cents
Each subsequent insertion = 28.9 cents

The rate becomes effective on July 2, 2008. The rate was determined by applying the formula specified in the statute. According to the federal Department of Labor, Bureau of Labor Statistics, the consumer price index for all urban consumers increased 3.9% from April 2007 to April 2008. The April index was the most recent index available as of June 4, 2008, the date on which this notice was submitted for publication.

Pursuant to Iowa Code section 618.11, this notice is exempt from the rule-making process in Iowa Code chapter 17A.

Questions with respect to this notice may be directed to:

Lorrie Tritch, ITE Infrastructure/Printing Administrator
Iowa Department of Administrative Services
1305 E. Walnut
Des Moines, Iowa 50319
Telephone: (515)281-7702
E-mail: Lorrie.Tritch@iowa.gov

ARC 6905B**ELDER AFFAIRS DEPARTMENT[321]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 7, "Area Agency on Aging Service Delivery," Iowa Administrative Code.

The proposed amendments delete portions of the chapter relating to the family caregiver program. This program will be administered under a new chapter which is being noticed concurrently.

Any interested person may make written suggestions or comments on the proposed amendments on or before July 23, 2008. Such written suggestions or comments should be directed to the Department

ELDER AFFAIRS DEPARTMENT[321](cont'd)

of Elder Affairs, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319; E-mailed to danika.rosales@iowa.gov; or faxed to (515)242-3300.

These amendments are intended to implement Iowa Code chapter 231.

The following amendments are proposed.

ITEM 1. Rescind the definition of “Family caregiver” in rule **321—7.1(231)**.

ITEM 2. Rescind rule **321—7.25(231)**.

ARC 6919B

ELDER AFFAIRS DEPARTMENT[321]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 231.14, 231.23A and 249H.10, the Elder Affairs Department hereby gives Notice of Intended Action to adopt new Chapter 14, “Iowa Family Caregiver Support Program,” Iowa Administrative Code.

The proposed new chapter provides support services for family caregivers of persons aged 60 and over and for grandparents or older individuals who are relative caregivers of children. It also establishes standards for those services and includes a severability rule.

Any interested person may make written suggestions or comments on the proposed chapter on or before July 23, 2008. Such written suggestions or comments should be directed to the Department of Elder Affairs, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319; E-mailed to danika.rosales@iowa.gov; or faxed to (515)242-3300.

These rules are intended to implement Iowa Code sections 231.23A and 249H.10.

The following amendment is proposed.

Adopt the following new 321—Chapter 14:

CHAPTER 14

IOWA FAMILY CAREGIVER SUPPORT PROGRAM

321—14.1(231,249H) Purpose. The purpose of the family caregiver program is to provide support services for family caregivers for persons aged 60 and over and for grandparents or older individuals who are relative caregivers of children. The program shall be called the Iowa family caregiver support program.

321—14.2(231,249H) Definitions. Words and phrases used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

“*Child*” means an individual who is not more than 18 years of age or is an individual with a disability.

“*Family caregiver*” means an adult, selected by the consumer or the consumer’s legal representative, who is an informal provider of in-home and community care to an individual.

“*Grandparent*” or “*older individual*” who is a relative caregiver means a grandparent or stepgrandparent of a child, or a relative of a child by blood, marriage or adoption who is 55 years of age or older and:

1. Lives with the child; and
2. Is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and
3. Has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

“Respite care” means temporary, substitute support or living arrangements for care recipients in order to provide a brief period of relief or rest for caregivers.

“Supplemental services” means services or items that are provided on a limited basis to complement the care provided by the caregiver.

321—14.3(231,249H) Eligibility for services. In order to be eligible for services under this chapter, a family caregiver shall be providing informal in-home or community care to:

1. A person aged 60 and over; or
2. A person of any age with Alzheimer’s disease or a related disorder with neurological and organic brain dysfunction; or
3. A child or children under the age of 18; or
4. An adult child or children aged 19 through 59 with a disability.

321—14.4(231,249H) Priorities for service. In determining eligibility for services, priority shall be given to:

1. Caregivers providing care for an adult child with severe disabilities. Services provided to these caregivers are not counted against the 10 percent limitation for grandparents and other caregivers providing care to children under the age of 18; and
2. Caregivers who are older individuals with greatest social need, and older individuals with greatest economic need with particular attention to low-income older individuals; and
3. Those persons named in 321 IAC 7.3(231) and persons with low income, including low-income minorities and persons with limited English proficiency.

The order of this list does not create an order of priority. Priority ranking is equal for all categories listed.

321—14.5(231,249H) Coordination. The AAA and AAA contractors shall coordinate activities with other community agencies and volunteer organizations providing the types of services described in this chapter.

321—14.6(231,249H) Service categories. Each AAA shall provide all of the following services under this chapter. Services may be provided to individuals or to groups directly or through contract procedures as specified in 321 IAC 6. The services are:

14.6(1) Information about available services. This may include, but is not limited to, providing newsletters, seminars or other types of group presentations to family caregivers which identify and explain the various services that may be available.

14.6(2) Access to services. This includes, but is not limited to, information, assistance, case management, referral, outreach and adequate follow-up procedures to ensure that, to the maximum extent practicable, individuals receive the needed services that are available within their communities.

14.6(3) Counseling, training and support groups. This includes, but is not limited to, services such as:

- a. Individual or group support programs that develop or strengthen informal or family support systems.
- b. Formal or informal opportunities for individuals to acquire knowledge, experiences or skills in caregiving.
- c. Counseling to enable the caregiver and family to resolve problems or to relieve temporary stresses. Mental health and behavioral health services shall be provided by a mental health professional licensed in this state.

14.6(4) Respite care. Allowable services include:

- a. In-home respite;
- b. Respite provided by the care recipient attending an adult day service program, senior center or other nonresidential program;
- c. Institutional respite provided by placing the recipient in a setting such as a nursing facility for a short period of time; or
- d. Children attending summer camps or similar short-term care while children are being cared for by grandparents.

14.6(5) Supplemental services. Services may include, but are not limited to:

- a. Chore services such as heavy housework, yard work or sidewalk maintenance.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

- b. An emergency in-home or wearable response system.
- c. Legal assistance.
- d. Material aid in the form of goods or services such as food, smoke detectors, eyeglasses, security devices, or other similar aid.
- e. Assisted transportation using regular vehicles which may include provision of assistance, including an escort, to a person with physical or cognitive difficulties.

321—14.7(231,249H) Quality standards.

14.7(1) AAA staff requirements. Each AAA shall:

- a. Assess the full-time equivalent for its family caregiver program, considering current funding levels among other factors, and shall staff the program to best meet the needs of the service delivery area.
- b. Employ or contract for a designated family caregiver specialist with the following demonstrated competencies:

(1) A bachelor's degree in the human services field or an associate's degree in the human services field and two years of employment in information and referral positions, which may be substituted for a bachelor's degree.

(2) If the applicant does not have the certification required in subparagraph (1), three years of employment in information and referral positions is required.

14.7(2) Certification. The family caregiver specialist shall possess a Certification for Information and Referral Specialists in Aging (CIRS-A) from the Alliance of Information and Referral Systems at the time of employment or shall agree to obtain such certification within six months of employment.

14.7(3) Training. The family caregiver specialist shall attend annual and other family caregiver specialist training when provided by the department during the term of employment.

14.7(4) Local contract monitoring. The AAA shall utilize a system to monitor all service providers' performance under the contract and promptly ensure that any problems that arise are corrected. All contracts shall be created and monitored under the provisions of 321 IAC 6.11(231) or 321 IAC 5.15(231) as applicable.

a. Monitoring means any planned, ongoing, or periodic activity that measures outcomes and ensures contractor compliance with the terms and conditions of the contract and customer satisfaction and also ensures that the contractor meets the needs of the caregiver.

b. The AAA shall conduct caregiver evaluations to determine the quality of services and goods provided, including but not limited to customer satisfaction surveys, inspections, and evaluation of goods and services provided.

c. Monitoring activities shall include:

(1) Periodic contact, including on-site visits, to maintain a continuous dialogue with the contractor and to review progress on a regular basis.

(2) Requiring the contractor to submit progress reports or other appropriate data based on predefined contract criteria. These reports shall include documentation of where and how moneys received were expended and results of caregiver performance evaluations and customer satisfaction surveys.

(3) Reviewing the contractor's reports and verifying the services provided to determine if those services adhere to the contract. Substandard performance shall be identified and addressed appropriately, up to and including cancellation of the contract. Any action shall be completed as soon as possible to maintain quality service to the consumer.

(4) Comparing contract billings with the terms contained in the contract to ensure that costs or payments are within contract parameters.

321—14.8(231,249H) Reports. The AAA shall record all services and submit all fiscal and performance reports for this program to the department in accordance with current instructions issued by the department.

321—14.9(231,249H) Failure to meet standards. When an AAA fails to meet the requirements of this chapter, the department shall follow procedures outlined in 321 IAC 4.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

321—14.10(231,249H) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

These rules are intended to implement Iowa Code chapters 231 and 249H.

ARC 6918B

ELDER AFFAIRS DEPARTMENT[321]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 28, "Iowa Senior Living Program—Home- and Community-Based Services for Seniors," Iowa Administrative Code.

The proposed amendments:

1. Bring the chapter's language into compliance with changes made in Iowa Code chapter 249H; and
2. Add a severability clause to the chapter.

Any interested person may make written suggestions or comments on these proposed amendments before 4:30 p.m. on July 23, 2008. Written comments should be directed to the Department of Elder Affairs, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319; E-mailed to danika.rosales@iowa.gov; or faxed to (515)725-3300.

These amendments are intended to implement Iowa Code chapter 231.

The following amendments are proposed.

ITEM 1. Amend rule **321—28.3(231,249H)**, definition of "Senior living program," as follows:

"Senior living program" means the senior living program created in Iowa Code chapter 249H to provide for long-term care alternative services, ~~long term care service development, and nursing facility conversion.~~

ITEM 2. Adopt the following **new** subrules 28.6(3) and 28.6(4):

28.6(3) An AAA may use client participation for services funded under Iowa Code section 249H.7 for persons with moderate income or above if the AAA does not utilize Older Americans Act funding for the same service category.

28.6(4) An AAA subcontractor may use client participation for services funded under Iowa Code section 249H.7 for persons with moderate income or above if the subcontractor does not receive Older Americans Act funding for the same service category.

ITEM 3. Amend rule 321—28.8(231,249H) as follows:

321—28.8(231,249H) Prohibited use of senior living trust fund moneys. SLTF moneys shall be not be used to:

- ~~1. —Fund the same service category when providing direct service.~~
- ~~2. —Contract Older Americans Act funds and senior living trust funds to a provider for the same service category.~~
- ~~3. 1. Purchase a service when the client is eligible for third-party purchase of that service by sources such as Medicare, Medicaid, Medicaid home- and community-based services (HCBS) waiver and private long-term care insurance.~~
- ~~4. 2. Replace existing funding for a long-term care service.~~

ELDER AFFAIRS DEPARTMENT[321](cont'd)

The department may grant an exception in order to enhance access to a service if the displaced funding is subsequently dedicated by the AAA to another long-term care service for seniors and results in an increase in total AAA funding for long-term care services to seniors equal to the SLTF dollars used for replacement.

ITEM 4. Rescind paragraph **28.9(1)“b.”**

ITEM 5. Reletter paragraph **28.9(1)“c”** as **28.9(1)“b.”**

ITEM 6. Amend paragraph **28.9(4)“b”** as follows:

b. ~~For subsequent state fiscal years,~~ SLTF service dollars appropriated under Iowa Code section 249H.7 shall be disbursed to subcontractors through the area plan process as described in 321 IAC 5.

ITEM 7. Adopt the following new rule 321—28.11(231,249H):

321—28.11(231,249H) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

ARC 6922B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455A.6, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 1, “Operation of Environmental Protection Commission,” Iowa Administrative Code.

The proposed amendment modifies the voting requirements for the Commission. Under the amendment, for official action by the Commission the requisite number of Commissioners varies depending on the number of Commissioners currently appointed by the Governor. The amendment provides that four votes are sufficient to take action when there are only seven appointed members.

From late November 2007 until very recently, the Commission has had only seven appointed members from a statutory total of nine members. Because of the number of votes required to take action, these two vacancies have resulted in delayed Agency action, gridlock, and stalemate, with the minority at times deciding an issue. The Commission wishes to adopt an amendment to provide that four votes are sufficient to take action when there are only seven appointed members. This amendment is authorized by Iowa Code section 455A.6(5), which allows the Commission to determine by rule the number of votes required to take action when a quorum is present.

Any interested person may make written suggestions or comments on the proposed amendment on or before July 22, 2008. Written comments should be directed to Lisa Nissen, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail lisa.nissen@dnr.iowa.gov.

Also, there will be a public hearing on July 22, 2008, at 10 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, people will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 6921B**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code section 455A.6.

ARC 6871B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 239B.4(6), the Department of Human Services proposes to amend Chapter 41, "Granting Assistance," Iowa Administrative Code.

The proposed amendment will exempt income earned through temporary employment with the U.S. Bureau of the Census from consideration in determining eligibility for the Family Investment Program. Many low-income people are hired to help with the collection of census data. Exemption of this income is supported by the U.S. Bureau of the Census and by the Administration for Children and Families in the U.S. Department of Health and Human Services. This exemption was applied to the last federal census, but the reference was time-limited. This amendment will make the exemption permanent.

This amendment does not provide for waivers in specified situations because the change benefits the persons affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441 1.8(17A,217).

Any interested person may make written comments on the proposed amendment on or before July 23, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319 0114. Comments may be sent by fax to (515)281-4980 or by E mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 239B.7.

The following amendment is proposed.

Amend paragraph **41.27(7)"ak"** as follows:

ak. All census earnings received by temporary workers from the Bureau of the Census ~~for Census 2000 during the period of April 1, 2000, through January 31, 2001.~~

ARC 6920B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement section 29C.20A, the Department of Human Services proposes to amend Chapter 58, "Emergency Assistance," Iowa Administrative Code.

The proposed amendments make the following changes to the Iowa Disaster Aid Individual Assistance Grant Program:

- Raise the reimbursement limit for home repair to \$5,000, commensurate with the higher benefit limit

Adopted and Filed Emergency and published herein as **ARC 6878B**.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Add reimbursement for debris removal, including trees, of up to \$1,000, based on the Department's experience of the kinds of losses suffered.
- Increase the limit for electrical or mechanical repairs from \$300 to \$1,000.
- Require additional documentation from the applicant, including proof of income and identity, proof of vehicle registration and insurance, and a brief statement of how the disaster caused the loss being claimed. The purpose of these requirements is to facilitate application processing and deter fraudulent claims.
- Clarify how the program covers insurance deductibles. The program will not pay if the claim is higher than the deductible. For example, if a homeowner has a \$500 deductible and the cost to repair roof damage from a falling tree limb is \$450, the program will pay \$450. If the cost to repair the roof is \$3,000, the program will not pay toward the roof repair.
- Clarify that the program does not cover repairs on rental property.
- Clarify the respective roles of the county emergency management coordinator, the Homeland Security and Emergency Management Division of the Department of Public Defense, and the Department of Human Services in administering the program.
- Change the name of Division I of Chapter 58 to match the name used in the Iowa Code. These amendments do not provide for waivers in specified situations. Individuals may request a waiver under the Department's general rule on exceptions at rule 441—1.8(17A,217). Any interested person may make written comments on the proposed amendments on or before July 23, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code Supplement section 29C.20A.

The following amendments are proposed.

ITEM 1. Amend the title of **441—Chapter 58, Division I**, as follows:

DIVISION I
IOWA DISASTER REIMBURSEMENT AID INDIVIDUAL ASSISTANCE GRANT PROGRAM

ITEM 2. Amend subrule 58.3(2) as follows:

58.3(2) The application ~~includes~~ shall include:

- a. A declaration of the household's annual income, accompanied by:-
 - (1) A current pay stub, W2 form, or income tax return, or
 - (2) Documentation of current enrollment in an assistance program administered by the department of human services, the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), or other subsidy program.
- b. A release of confidential information to personnel involved in administering the program.
- c. A certification of the accuracy of the information provided.
- d. An assurance that the household had no insurance coverage for claimed items.
- e. A commitment to refund any part of a grant awarded that is duplicated by insurance or by any other assistance program, such as but not limited to local community development groups and charities, the Small Business Administration, or the Federal Emergency Management Administration.
- f. A short, handwritten narrative of the disaster event and how the disaster caused the loss being claimed.
- g. A copy of a picture identification document for each adult applicant.
- h. When vehicle damage is claimed, current copies of the vehicle registration and liability insurance card.

ITEM 3. Amend subrule 58.4(4) as follows:

58.4(4) The household has disaster-related expenses or serious needs that are not covered by insurance or the claim is less than the deductible amount. This program will not reimburse the amount of the insurance deductible when the claim exceeds the deductible amount.

ITEM 4. Amend subparagraph **58.5(1)“d”(4)** as follows:

- (4) Electrical or mechanical repairs, up to a maximum of ~~\$300~~ \$1,000.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 5. Amend subrule 58.5(2) as follows:

58.5(2) Reimbursement may be issued for home repair as needed to make the home safe, sanitary, and secure, up to a maximum of ~~\$1,000~~ \$5,000.

a. Assistance will be denied if preexisting conditions are the cause of the damage.

b. Reimbursement may be authorized for ~~the repair of~~:

~~a. (1) Structural~~ The repair of structural components, such as the foundation and roof.

~~b. (2) Floors~~ The repair of floors, walls, ceilings, doors, windows, and carpeting of essential interior living space that was occupied at the time of the disaster.

(3) Debris removal, including trees, up to a maximum of \$1,000.

c. Repairs to rental property are excluded under this program.

ITEM 6. Amend rule 441—58.6(29C) as follows:

441—58.6(29C) Eligibility determination and payment.

58.6(1) The county emergency management coordinator or designee shall:

~~a. Certify the household's residence and disaster related expenses; and~~ Confirm that:

(1) The address provided on the application is a valid address and is reasonably believed to be in the disaster-affected area, and

(2) Disaster-related expenses were possible as a result of the current disaster.

~~b. Submit the household's application form to the DHS Division of Results-Based Accountability, 1305 East Walnut Street, Des Moines, Iowa 50319-0114~~ Homeland Security and Emergency Management Division, Camp Dodge, Building W-4, 7105 NW 70th Avenue, Johnston, Iowa 50131. The envelope shall be marked "DRGP application."

58.6(2) The homeland security and emergency management division of the department of public defense shall:

a. Review the application.

b. Submit the household's application form to the DHS Division of Results-Based Accountability, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. The envelope shall be marked "DRGP application."

~~58.6(2)~~ **58.6(3)** Designated disaster staff in the department of human services shall:

~~a. Review the application.~~

~~b. a.~~ Determine eligibility and the amount of payment.

~~e. b.~~ Notify the applicant household of the eligibility decision.

~~d. c.~~ Authorize payment to an eligible household.

d. Process appeals.

ARC 6886B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment provides for "continuous eligibility" for children under the age of 19 who are eligible for Medicaid under the Family Medical Assistance Program (FMAP), the Child Medical Assistance Program (CMAP), or the Mothers and Children (MAC) Program, as directed by 2008 Iowa Acts, House File 2539, section 3. Once the child is determined eligible for Medicaid under one of these coverage groups, the child's eligibility will continue for up to 12 months without regard to changes in family income or household

HUMAN SERVICES DEPARTMENT[441](cont'd)

composition that might make the household ineligible for Medicaid. Eligibility may end before 12 months have elapsed due to the annual eligibility review or because the child reaches the age of 19.

This strategy is intended to promote continuity of health care coverage for children. Studies show that children with gaps in health care coverage have less access to services than do those with continuous coverage.

This amendment does not provide for waivers in specified situations because continued coverage is a benefit to the children affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441-1.8(17A,217).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 6884B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before July 23, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319 0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code Supplement section 249A.3 as amended by 2008 Iowa Acts, House File 2539.

ARC 6873B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

The proposed amendment eliminates the requirement for maternity patients and children receiving home health agency services to be assigned a Department service worker. This amendment will allow home health agency services to be available based on identified medical needs. The agency's treatment plan will continue to be reviewed and approved by the member's physician.

In 2004, the Department redesigned its child welfare services to focus on children whose safety, well-being, and permanency are most at risk. Families whose assessments indicate that abuse is unfounded but who have identified service needs have the opportunity to access community services. These families do not have a continuing child welfare case through the Department. If the Department does not have an open case, a service worker is not available to participate in planning for home health services.

The Assuring Better Child Health and Development Initiative, a clinical panel that reviewed service access for children from birth through three years of age, has recommended this change. The General Assembly in 2007 Iowa Acts, chapter 218, section 11(14), instructed the Department to implement the recommendations of this panel.

This amendment does not provide for waivers in specified situations because it removes a restriction on the persons affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441-1.8(17A,217).

Any interested person may make written comments on the proposed amendment on or before July 23, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 249A.4.

The following amendment is proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend subrule 78.9(9) as follows:

78.9(9) Home health agency care for maternity patients and children. The intent of home health agency services for maternity patients and children shall be to provide services when the ~~recipients~~ members are unable to receive the care outside of their home and require home health care due to a high-risk factor. Routine prenatal, postpartum, or child health care is a covered service in a physician's office or clinic and, therefore, is not covered by Medicaid when provided by a home health agency.

a. Treatment plans for maternity patients and children shall identify:

(1) ~~the~~ The potential risk factors,

(2) ~~the~~ The medical factor or symptom which verifies the child is at risk,

(3) ~~the~~ The reason the ~~recipient~~ member is unable to obtain care outside of the home, and

(4) ~~the~~ The medically related task of the home health agency. ~~If the home health agency is assisting the family to cope with socioeconomic and medical problems, the plan of care shall indicate the involvement of the department's county office and document that the department and the home health agency have agreed that services are in the best interest of the child and are needed to supplement the intervention of the department social worker.~~

(5) ~~The plan of treatment shall document along with the high-risk factors, the~~ member's diagnosis,

(6) ~~specific~~ Specific services and goals, and

(7) ~~the~~ The medical necessity for the services to be rendered. A single high-risk factor does not provide sufficient documentation of the need for services.

~~a.~~ b. The following list of potential high-risk factors may indicate a need for home health services to prenatal maternity patients:

(1) to (8) No change.

~~b.~~ c. The following list of potential high-risk factors may indicate a need for home health services to postpartum maternity patients:

(1) to (12) No change.

~~c.~~ d. The following list of potential high-risk factors may indicate a need for home health services to infants:

(1) to (10) No change.

~~d.~~ e. The following list of potential high-risk factors may indicate a need for home health services to preschool or school-age children:

(1) to (9) No change.

ARC 6901B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2008 Iowa Acts, Senate File 2425, section 32(13), the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

These amendments reflect the following changes in Medicaid reimbursement rates enacted in 2008 Iowa Acts, Senate File 2425:

- Rate limits for the following provider categories are increased by 1 percent: advanced registered nurse practitioner, ambulance, ambulatory surgical center, audiologist, birth center, chiropractor, clinic, dentist, durable medical equipment and supply dealer, family planning clinic, hearing aid dispenser, home- and community-based habilitation services, home health agency, lead inspection agency, maternal health center,

HUMAN SERVICES DEPARTMENT[441](cont'd)

optician, optometrist, orthopedic shoe dealer, physical therapist, podiatrist, physician, psychologist, remedial services, and screening center.

- Rates for hospital inpatient and outpatient services (other than at critical access hospitals) are increased by 1 percent. The 1 percent increase has been incorporated into the new ambulatory payment classification rates and hospital outpatient fee schedule adopted in **ARC 6889B**, published herein. Funds for hospital reimbursement for direct and indirect medical education and disproportionate share payments are also increased by 1 percent to provide a 1 percent increase in reimbursement.

- The maximum reimbursement rate for inpatient care in a psychiatric medical institution for children is raised to \$167.19 per day. Rates for outpatient day treatment are increased by 1 percent.

- The dispensing fee for drugs is raised to \$4.57.

- Rates for the following home- and community-based waiver services are increased by 1 percent: adult day care, assistive devices, behavioral programming, case management (except for the elderly waiver), chore service, counseling, emergency response system, family and community support, family counseling, financial management, home-delivered meals, home health aide, homemaker, independent support broker, in-home family therapy, interim medical monitoring and treatment, nursing care, nutrition counseling, prevocational services, respite care, senior companion, supported community living, and supported employment. Elderly waiver case management reimbursement is defined in a different section of the Department's appropriations bill and is not included in the 1 percent increase. Consumer-directed attendant care providers have a rate increase of 3 percent. Monthly caps on waiver services are increased by 3 percent to accommodate the increase in provider rates. Annual or lifetime caps on home and vehicle modification and specialized medical equipment are increased by 1 percent.

Some language revisions have been made to clarify current policy for air ambulance services, home health aides, nursing care, home health agencies (including respite care and interim medical monitoring and treatment), and outpatient hospital care.

These amendments do not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 6900B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before July 23, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4 and 2008 Iowa Acts, Senate File 2425, section 32, subsections 1, 8, and 10.

ARC 6903B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement section 234.6, the Department of Human Services proposes to amend Chapter 150, "Purchase of Service," Iowa Administrative Code.

This amendment implements a 1 percent across-the-board increase for social service providers as directed by 2008 Iowa Acts, Senate File 2425, section 32(5). This increase affects foster care placements in supervised apartment living and shelter care. The increase will be applied to reimbursement rates in effect on June 30,

HUMAN SERVICES DEPARTMENT[441](cont'd)

2008, or to the provider's actual and allowable cost for each service plus inflation, whichever is less. The amendment eliminates references to adoption services, which are no longer available through a purchase of service contract.

This amendment does not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 6902B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before July 23, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code Supplement sections 234.6 and 234.35 and 2008 Iowa Acts, Senate File 2425, section 32.

ARC 6910B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 156, "Payments for Foster Care and Foster Parent Training," Iowa Administrative Code.

This amendment increases basic reimbursement rates for foster family care as directed by 2008 Iowa Acts, Senate File 2425, section 32(4). This increase maintains the rates at 65 percent of the USDA estimate of the cost to raise a child in 2007, in compliance with Iowa Code section 234.38. By reference, these amounts are also the maximum payments allowed for foster care supervised apartment living maintenance payments, adoption subsidy maintenance payments, and guardianship subsidy payments.

This amendment does not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 6906B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before July 23, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code sections 234.35 and 234.38 and 2008 Iowa Acts, Senate File 2425, section 32.

ARC 6876B

HUMAN SERVICES DEPARTMENT[441]**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 170, "Child Care Services," Iowa Administrative Code.

The proposed amendments:

- Add new forms and procedures to be used with the Department's new child care management information system, called KinderTrack.
- Align Child Care Assistance policy with policy of other financial support programs administered by the Department.

The KinderTrack system will contain the work schedules and training schedules of eligible families and the number of units of child care services that have been authorized for each family. This database will allow automated issuance of a form informing the provider of what child care usage the Department expects to cover (separate from the notice of decision issued to the family) and issuance of a detailed billing statement listing the children and units expected to be claimed.

When the KinderTrack system is implemented, the provider will have the option of completing and returning the printed claim and attendance documentation, similar to the methods currently used, or completing and submitting the claim on line through access to a secure Internet Web site. A provider who chooses to submit claims electronically must print an attendance record that is signed by both the parent and the care provider to document agreement on the amount of care to be billed. Since the attendance documentation will not be submitted with the claim, the provider must maintain the documentation for a period of five years after the billing date. Failure to produce this documentation upon audit will be grounds for recovery of the assistance paid.

The Department expects to phase in conversion to the new system on a geographical basis over a period of about six months. Areas that are not yet converted will continue to use the current enrollment and billing procedures.

The earnings of a student who is under the age of 18 is added to the list of income exclusions to match the policy of the Family Investment Program. Income from temporary employment with the Bureau of the Census is also excluded. The Medicaid, HAWK-I, Family Investment, and Child Care Assistance programs are all moving to exclude income from temporary census employment on the recommendation of the Department of Health and Human Services. Treating the same family circumstances in the same way across multiple programs clarifies and simplifies the eligibility process for both families and workers.

These amendments do not provide for waivers in specified situations because they benefit the applicant family and offer a range of options to the provider. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before July 23, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code Supplement section 237A.13.

The following amendments are proposed.

ITEM 1. Amend rule **441—170.1(237A)**, definition of "Provider error," as follows:

"Provider error" means and may result from:

1. Presentation for payment of any false or fraudulent claim for services or merchandise;

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. Submittal of false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled;
3. Failure to report the receipt of a child care assistance payment in excess of that approved by the department;
4. Charging the department an amount for services rendered over and above what is charged private pay clients for the same services;
5. Failure to maintain a copy of Form 470-4535, Child Care Assistance Billing/Attendance Provider Record, signed by the parent and the provider.

ITEM 2. Adopt the following new subparagraphs **170.2(1)“d”(35)** and **170.2(1)“d”(36)**:

(35) The earnings of a child aged 18 or under who is a full-time student.

(36) Census earnings received by temporary workers from the Bureau of the Census.

ITEM 3. Amend paragraph **170.3(1)“c”** as follows:

c. The date of application is the date a signed application form containing a legible name and address is received in the ~~county~~ department office.

ITEM 4. Amend paragraph **170.3(3)“a”** as follows:

a. The department worker or PROMISE JOBS worker shall determine the number of units of service authorized for each eligible family and shall:

(1) ~~inform~~ Inform the family ~~and the family's provider~~ through the notice of decision; and

(2) Inform the family's provider through the notice of decision or through Form 470-4444 Certificate of Enrollment.

ITEM 5. Amend paragraph **170.4(7)“g”** as follows:

g. *Submission of claims.* The department shall issue payment when the provider submits correctly completed documentation of attendance and charges. The department shall pay only for the number of units of service authorized in the notice of decision issued pursuant to subrule 170.3(3). Providers shall submit ~~either a claim in one of the following ways:~~

(1) Using Form 470-0020, Purchase of Services Provider Invoice, or Form 470-4466 or 470-4466(S), Child Care Provider Claim, accompanied by Form 470-3872, Child Care Assistance Attendance Sheet, signed by the parent; ~~or~~

(2) Using Form 470-3896, PROMISE JOBS Child Care Attendance and Invoice;

(3) Using Form 470-4534, Child Care Assistance Billing/Attendance; or

(4) Using an electronic request for payment submitted through the KinderTrack system. Providers using this method shall print Form 470-4535, Child Care Assistance Billing/Attendance Provider Record, to be signed by the provider and the parent. The provider shall keep the signed Form 470-4535 for a period of five years after the billing date.

ARC 6912B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 185, “Rehabilitative Treatment Services,” Iowa Administrative Code.

These amendments implement a 1 percent across-the-board increase for group foster care service providers as directed by 2008 Iowa Acts, Senate File 2425, section 32(6). The increase will be applied to reimbursement rates in effect on June 30, 2008. Although rehabilitative treatment and supportive services

HUMAN SERVICES DEPARTMENT[441](cont'd)

have been discontinued, the rate structure in this chapter continues to be used for child welfare services provided by foster group care facilities.

The amendments also eliminate the subrule on statewide fixed rates, since the family-centered services for which those rates were used are no longer available through this type of contract. (See **ARC 5937B**, published in the Iowa Administrative Bulletin on June 6, 2007, and **ARC 6515B**, published in the Iowa Administrative Bulletin on January 2, 2008.)

These amendments do not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 6911B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before July 23, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 234.35 and 234.38 and 2008 Iowa Acts, Senate File 2425, section 32.

ARC 6914B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement section 234.6, the Department of Human Services proposes to amend Chapter 202, "Foster Care Services," Iowa Administrative Code.

The proposed amendments make the rule on the Department's responsibility to visit children in foster care consistent with federal expectations based on Title IV-B of the Social Security Act and correct a cross reference.

The amendments require the assigned Department service worker to visit each child in out-of-home placement at least monthly, usually in the place where the child lives. During the visit, the worker shall address the safety, permanency, and well-being of the child, including the child's needs, services to the child, and achievement of the case permanency plan goals. Current rules allow less frequent visits if the Department is purchasing supervision from another agency or if caseloads are high.

The Department is making this change to strengthen its commitment to uniform practice directed toward maintaining the safety, permanency, and well-being of children in out-of-home care. Assuring safety for children in out-of-home care is one of the outcomes measured in the federal Child and Family Services Review. The provision of monthly visits to children in out-of-home care is a condition of the state plan to receive funding under Title IV-B of the Social Security Act. Failure to meet the benchmarks set in Iowa's Title IV-B child and family service plan and program improvement plan for Child and Family Services Review could result in a reduction of federal funding.

These amendments do not provide for waivers in specified situations because visits provide protection to children in out-of-home care.

Any interested person may make written comments on the proposed amendments on or before July 23, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code Supplement section 234.6(6).

The following amendments are proposed.

ITEM 1. Amend subrule 202.3(3), introductory paragraph, as follows:

202.3(3) Voluntary placement of a child aged 18 or older may be granted for six months at a time only when the child meets the definition of “child” in ~~subrule 202.1(3)~~ rule 441—202.1(234), was in foster care or a state institution immediately ~~prior to~~ before reaching the age of 18, has continued in foster care or a state institution since reaching the age of 18, and has demonstrated a willingness to participate in case planning and to fulfill responsibilities as defined in the case plan. Payment shall be limited pursuant to 441—paragraph 156.20(1) “b.”

ITEM 2. Amend rule 441—202.11(234) as follows:

441—202.11(234) Services to the child. The department service worker shall maintain a continuous relationship with the child ~~and~~

202.11(1) The department service worker shall:

- a. help ~~Help~~ the child plan for the future,
- b. evaluate ~~Evaluate~~ the child’s needs and progress,
- c. supervise ~~Supervise~~ the living arrangement,
- d. arrange ~~Arrange~~ for social and other related services including, but not limited to, medical, psychiatric, psychological, and educational services from other resources as needed, and
- e. counsel ~~Counsel~~ the child in adjusting to the placement.

~~**202.11(1)** When the child is placed in a foster family home, the service worker shall visit the child regularly to fulfill responsibilities set forth in the case permanency plan and to review the child’s progress. The frequency of visits shall be based on the needs of the child. At a minimum, visits to the child shall be monthly, not to exceed 35 days.~~

~~**202.11(2)** When the child is placed in group foster care, purchased foster family care, or purchased supervised apartment living, the service worker shall visit the child regularly to fulfill responsibilities set forth in the case plan and to review the progress of the child. The assigned department service worker shall personally visit each child in out-of-home care at least once every calendar month, with the frequency of the visits based upon the needs of the child.~~

~~a. If the permanency goal for the child is long-term foster care, visits shall be at least quarterly, not to exceed 90 days. The visit shall take place in the child’s place of residence the majority of the time.~~

~~b. For all other cases, visits shall be at least every 45 days. When the funded full-time equivalency (FTE) workload exceeds 150, as established in the department’s budget allocation, minimum visits for group care shall be at least quarterly, not to exceed 90 days; for purchased foster family care visits shall be at least every other month, not to exceed 60 days. The visit shall be of sufficient length to focus on issues pertinent to case planning. During the visit, the worker shall address the safety, permanency, and well-being of the child, including the child’s needs, services to the child, and achievement of the case permanency plan goals.~~

202.11(3) No change.

This rule is intended to implement Iowa Code section 234.6(6) “b.”

ARC 6909B

INSURANCE DIVISION[191]**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 505.8 and chapter 515A, the Insurance Division hereby gives Notice of Intended Action to adopt new Chapter 60, "Workers' Compensation Insurance Rate Filing Procedures," Iowa Administrative Code.

The purpose of this chapter is to provide clarification and guidance to insurers regarding the deviations in workers' compensation filings as permitted under Iowa Code section 515A.7. The Division intends that the chapter will become effective January 1, 2009, and that insurers operating in Iowa will comply with these rules beginning on that date.

Any interested person may make written suggestions or comments on this proposed new chapter on or before July 30, 2008. Such written materials should be directed to Ann Outka, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on July 30, 2008, at 10 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who intend to attend the public hearing and who have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

These rules are intended to implement Iowa Code section 515A.7.

The following amendment is proposed.

Adopt the following **new** 191—Chapter 60:

CHAPTER 60**WORKERS' COMPENSATION INSURANCE RATE FILING PROCEDURES****191—60.1(515A) Purpose.**

60.1(1) The purpose of this chapter is to set forth filing procedures and parameters for rates as required by Iowa Code chapter 515A.

60.1(2) Nothing herein shall be construed to create or imply a private cause of action for a violation of this chapter.

191—60.2(515A) Definitions, scope, authority.

60.2(1) The definitions of Iowa Code section 515A.2 are incorporated into this chapter by this reference. In addition, the following definitions shall apply:

"*Division*" means the Iowa insurance division.

"*SERFF*" means the National Association of Insurance Commissioners' System for Electronic Rate and Form Filing.

60.2(2) This chapter shall apply only to workers' compensation liability insurance.

60.2(3) This chapter is issued under the authority of Iowa Code section 505.8 and chapter 515A.

191—60.3(515A) General filing requirements.

60.3(1) Insurers required to file rates with the division shall submit required rate filings and any fees required for the filings electronically using SERFF. Insurers must comply with the division's requirements, including both the Iowa general instructions and the specific submission requirements for the type of

INSURANCE DIVISION[191](cont'd)

insurance for which the companies are submitting forms or rates, as set out on the SERFF Web site at www.serff.org.

60.3(2) No rate filing shall include any adjustment designed to recover underwriting or operating losses incurred out of state. Upon request by the division, insurers doing business in Iowa shall segregate in their rate filings data from any state identified by the division, and the filings shall include a certification that no portion of any rate increase is designed to recover underwriting or operating losses incurred in another state.

191—60.4(515A) Rate or manual rule filing.

60.4(1) Every insurer shall file with the division, pursuant to provisions of Iowa Code chapter 515A, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use.

a. An insurer may satisfy its obligation to make such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings on its behalf.

b. Every insurer shall adhere to the filings made on its behalf by a rating organization except that any such insurer may file a deviation from the class rates, schedules, rating plans, or rules, or a combination thereof for approval by the division.

c. Deviations may be filed at any time during the year and, once approved, need only be refiled to propose changes to the approved deviations filing.

60.4(2) An insurer may file for approval by the division a uniform percentage rate deviation to be applied to the class rates of the rating organization's filing.

a. A rate deviation from the approved class rates of a rating organization shall not exceed 15 percent nor shall it cause the rate charged a policyholder to exceed the approved assigned risk rates.

b. In the event that an insurer has an existing approved filing for which the deviation results in rates above those approved for the assigned risk, the insurer must use the same deviation as approved for the assigned risk effective the same date as the approval of the assigned risk rates. A filing must be made confirming use of the new deviation on that date.

c. A filing must specify whether or not the proposed deviation is to be applied to minimum premiums.

60.4(3) Schedule rating may be used by any company, regardless of whether that company has an approved deviation. The maximum modification allowed for schedule rating is 15 percent for individual policies.

191—60.5(515A) Violation and penalties. Any insurer found after hearing to have violated a provision of this chapter shall be deemed to have committed an unfair trade practice under Iowa Code chapter 507B and shall be subject to the penalties set forth in Iowa Code chapter 507B.

191—60.6(515A) Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these rules which can be given effect without the invalid provisions or application. To this end, all provisions of these rules are declared to be severable.

191—60.7(515A) Effective date. This chapter shall become effective January 1, 2009, and shall apply to acts or practices committed on or after that date.

These rules are intended to implement Iowa Code section 515A.7.

ARC 6888B

INSURANCE DIVISION[191]**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 505.8, 508.36 and 508.37, the Iowa Insurance Division hereby gives Notice of Intended Action to adopt new Chapter 95, "Determining Reserve Liabilities for Preneed Life Insurance," Iowa Administrative Code.

The proposed rules in Chapter 95 designate the 1980 Commissioner Standard Ordinary (CSO) Mortality Table as the authority used to establish minimum reserves for preneed insurance. Iowa Code section 508.36 authorizes the Insurance Commissioner to adopt any mortality table adopted by the National Association of Insurance Commissioners. The National Association of Insurance Commissioners adopted the 1980 CSO Life Valuation Mortality Table for preneed life insurance products at its March 31, 2008, national meeting. All insurers selling preneed insurance policies are required to file policy forms with the 1980 CSO as the minimum standard by January 1, 2012.

This chapter does not provide for waivers.

Any interested person may make written comments on the proposed rules on or before July 22, 2008. Written comments may be sent to Matt Hargrafen, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted electronically to matt.hargrafen@iid.state.ia.us or via facsimile to (515)281-3059.

A public hearing will be held at the office of the Insurance Division at 10 a.m. on July 22, 2008. The Division is located at 330 Maple Street, Des Moines, Iowa.

These rules are intended to implement Iowa Code section 508.36.

The following amendment is proposed.

Adopt the following **new** 191—Chapter 95:

CHAPTER 95**DETERMINING RESERVE LIABILITIES FOR PRENEED LIFE INSURANCE**

191—95.1(508) Authority. This chapter is promulgated by the commissioner of insurance pursuant to Iowa Code sections 508.36 and 508.37.

191—95.2(508) Scope. These rules apply to preneed insurance, as defined in rule 95.4(508) of this chapter, and to similar policies and certificates.

191—95.3(508) Purpose. The purpose of this chapter is to establish for preneed insurance products minimum mortality standards for reserves and nonforfeiture values, and to require the use of the 1980 Commissioner Standard Ordinary (CSO) Life Valuation Mortality Table for use in determining the minimum standard of valuation of reserves and the minimum standard nonforfeiture values for preneed insurance products.

191—95.4(508) Definitions. For purposes of this chapter, the following definitions shall apply:

"2001 CSO Mortality Table" or "2001 CSO" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC (2nd Quarter 2002). Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of

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that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

“Preneed insurance” means any life insurance policy or contract or certificate that is issued in combination with, in support of, with an assignment to, or as a guarantee for a prearrangement agreement for goods and services to be provided at the time of and immediately following the death of the insured. Goods and services may include, but are not limited to, embalming, cremation, body preparation, viewing or visitation, coffin or urn, memorial stone, and transportation of the deceased. The status of the policy or contract as preneed insurance is determined at the time of issue in accordance with the policy form filing.

“Ultimate 1980 CSO” means the Commissioners’ 1980 Standard Ordinary Life Valuation Mortality Tables (1980 CSO) without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law approved in December 1983.

191—95.5(508) Minimum valuation mortality standards. For preneed insurance contracts and similar policies and contracts, the minimum mortality standard for determining reserve liabilities and nonforfeiture values for both male and female insureds shall be the ultimate 1980 CSO.

191—95.6(508) Minimum valuation interest rate standards.

95.6(1) The interest rates used in determining the minimum standard for valuation of preneed insurance shall be the calendar year statutory valuation interest rates as described in Iowa Code section 508.36(5) “b.”

95.6(2) The interest rates used in determining the minimum standard for nonforfeiture values for preneed insurance shall be the calendar year statutory nonforfeiture interest rates as described in Iowa Code section 508.37(6) “i.”

191—95.7(508) Minimum valuation method standards.

95.7(1) The method used in determining the standard for the minimum valuation of reserves of preneed insurance shall be the method described in Iowa Code section 508.36.

95.7(2) The method used in determining the standard for the minimum nonforfeiture values for preneed insurance shall be the method described in Iowa Code section 508.37.

191—95.8(508) Transition rules.

95.8(1) For preneed insurance policies issued on or after [insert the effective date of this chapter] and before January 1, 2012, the 2001 CSO may be used as the minimum standard for reserves and minimum standard for nonforfeiture benefits for both male and female insureds.

95.8(2) If an insurer elects to use the 2001 CSO as a minimum standard for any policy issued on or after [insert the effective date of this chapter] and before January 1, 2012, the insurer shall provide, as a part of the actuarial opinion memorandum submitted in support of the company’s asset adequacy testing, an annual written notification to the domiciliary commissioner. The notification shall include:

- a. A complete list of all preneed policy forms that use the 2001 CSO as a minimum standard;
- b. A certification signed by the appointed actuary stating that the reserve methodology employed by the company in determining reserves for the preneed policies issued after the effective date and using the 2001 CSO as a minimum standard, develops adequate reserves. For the purposes of this certification, the preneed insurance policies using the 2001 CSO as a minimum standard cannot be aggregated with any other policies; and

- c. Supporting information regarding the adequacy of reserves for preneed insurance policies issued after [insert the effective date of this chapter] and using the 2001 CSO as a minimum standard for reserves.

95.8(3) Preneed insurance policies issued on or after January 1, 2012, must use the ultimate 1980 CSO in the calculation of minimum nonforfeiture values and minimum reserves.

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191—95.9(508) Effective date. This chapter is applicable to preneed insurance policies and certificates and similar contracts and certificates, as specified in rule 95.2(508) of this chapter, issued on or after January 1, 2009.

These rules are intended to implement Iowa Code sections 508.36 and 508.37.

ARC 6904B**INSURANCE DIVISION[191]****Notice of Intended Action**

Pursuant to the authority of Iowa Code section 523A.809, the Insurance Division hereby gives Notice of Intended Action to rescind Chapter 100, “General Provisions,” Chapter 101, “Trust Deposits and Trust Funds,” Chapter 102, “Warehoused Merchandise,” Chapter 103, “Licensing of Preneed Sellers and Sales Agents,” Chapter 104, “Continuing Education for Sales Agents,” Chapter 105, “Standards of Conduct and Prohibited Practices,” and Chapter 106, “Disciplinary Procedures,” Iowa Administrative Code, and to adopt new Chapters 100 to 106 with the same titles.

The amendments that rescinded 191—Chapter 19 and that adopted existing 191—Chapters 100 to 106 were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on October 24, 2007, as **ARC 6333B**, and became effective September 28, 2007. Notice of Intended Action to solicit comments on that submission was published in the October 24, 2007, Iowa Administrative Bulletin as **ARC 6334B**. That Notice of Intended Action was expired. This proposed amendment rescinds Chapters 100 to 106 and adopts new Chapters 100 to 106 in lieu thereof.

These chapters implement and administer the provisions of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, which regulate the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of these items. The Division intends that persons operating as preneed sellers and sales agents in Iowa will comply with these rules beginning October 1, 2008.

Any interested person may make written suggestions or comments on these proposed chapters on or before July 22, 2008. Such written materials should be directed to Dennis Britson, Iowa Securities and Regulated Industries Bureau, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on July 22, 2008, at 2 p.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

These rules are intended to implement Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, [2007 Iowa Code Supplement chapter 523A], and 2008 Iowa Acts, Senate File 2349 and House File 2555.

The following amendment is proposed.

ITEM 1. Rescind 191—Chapter 100 and adopt the following **new** chapter in lieu thereof:

CHAPTER 100
GENERAL PROVISIONS

191—100.1(523A) Purpose. This chapter and 191—Chapters 101 through 106 are promulgated to implement and administer the provisions of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559 [2007 Iowa Code Supplement chapter 523A], and 2008 Iowa Acts, Senate File 2349 and House File 2555, which regulate the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of those items. The provisions of this chapter also apply to 191—Chapters 101 through 106.

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191—100.2(523A) Definitions. For purposes of 191—Chapters 100 through 106, the definitions in Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, are incorporated by reference. In addition, the following definitions shall apply:

“*Active license*” means a license that is in effect and in good standing.

“*Commissioner*” means the Iowa insurance commissioner or staff of the Iowa insurance division as designated by the commissioner.

“*Commissioner’s Web site*” means the Web site of the Iowa insurance division, www.iid.state.ia.us.

“*Continuing education*” means planned, organized learning acts designed to maintain, improve, or expand a licensee’s knowledge and skills to maintain and improve compliance with 191—Chapters 100 through 106 and Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, and to maintain and improve the safety and welfare of the public.

“*Credit*” means at least 50 minutes spent by a licensee in actual attendance at and in completion of an approved continuing education activity. A credit may also be given for independent study.

“*Discipline*” means any civil penalty or sanction that the commissioner imposes upon a licensee.

“*Expired license*” means a license that has not been renewed by the renewal date.

“*Inactive license*” means a license that has been placed on inactive status by the commissioner at the request of the licensee.

“*Independent study*” means a subject, program or activity that a person pursues autonomously that meets the standards for approval criteria in these rules and includes a test at the conclusion of the study. Independent study includes programs conducted using television, the Internet, video, sound-recorded programs, correspondence work, and other similar media.

“*License*” means a preneed seller license or a sales agent license issued pursuant to 191—Chapter 103 or 191—Chapter 104 and Iowa Code chapter 523A.

“*License certificate*” means any document issued by the commissioner as evidence that a person is licensed with the commissioner.

“*Licensed person*” means any person who holds a preneed seller or sales agent license pursuant to Iowa Code chapter 523A, including any person who holds an inactive license.

“*Licensee*” means any person to whom the commissioner has issued a preneed seller license or sales agent license.

“*License renewal date*” means the date assigned by the commissioner for renewal of a license.

“*Licensure*” means the granting of a license by the commissioner pursuant to Iowa Code chapter 523A.

“*Review*” means the commissioner’s verification of satisfactory completion of continuing education requirements during a specified time period for certain licensees and persons, as selected by the commissioner, presenting or sponsoring continuing education activities.

“*Unlicensed person*” means any person who does not have a preneed seller or sales agent license pursuant to Iowa Code chapter 523A, including any person who surrendered a license to the commissioner and any person whose license was revoked by the commissioner.

191—100.3(523A) Contact and correspondence.

100.3(1) Contact information. All mailed complaints, inquiries and correspondence shall be sent to Securities and Regulated Industries Bureau, Iowa Insurance Division, 340 Maple Street, Des Moines, Iowa 50319-0066. Telephone inquiries may be made at (877)955-1212. E-mail correspondence may be made through the commissioner’s Web site: www.iid.state.ia.us.

100.3(2) Complaints, inquiries and correspondence. The commissioner may receive and process any complaint made regarding cemetery merchandise, funeral merchandise, funeral services or any combination of those items, or regarding a sales agent or a preneed seller that alleges certain acts or practices which may constitute one or more violations of the provisions of 191—Chapters 100 to 106 or of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555. Where appropriate, the commissioner may refer complaints, in whole or in part, to other agencies. Any member of the public or the industry, or any federal, state, or local official, may make and file a complaint with the commissioner. Complaints may be received from sources outside the state of Iowa and processed in the

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same manner as those originating in Iowa. If required by the commissioner, complaints shall be made on forms prescribed and provided by the commissioner.

100.3(3) Forms and instructions. Copies of all required forms and instructions are available on the commissioner's Web site and may be obtained by mail.

191—100.4(523A) Fees.

100.4(1) Manner of payment. Fees required by 191—Chapters 100 through 106 may be paid by check, credit card, or electronically, if available, or as directed by the commissioner.

100.4(2) Nonrefundable. Fees are not refundable.

100.4(3) Fee for paper filing. The commissioner shall assess a \$25 processing fee, to reimburse the commissioner for expenses in processing the filing, for any filing submitted in a nonelectronic format, if electronic filing is available through the commissioner's Web site.

100.4(4) Specific fees. Except as stated in these rules, fees are set by statute.

a. The license fee for a preneed seller pursuant to 191—paragraph 103.2(1)“g” is \$100 plus \$15 for each criminal history background check request that the commissioner needs to make.

b. The license fee for a sales agent pursuant to 191—paragraph 103.2(2)“f” is \$20 plus \$15 for each criminal history background check request that the commissioner needs to make.

c. The fee for a four-year license renewal for a preneed seller or sales agent pursuant to 191—subrule 103.4(3) is \$20.

These rules are intended to implement Iowa Code chapter 523A, and 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

ITEM 2. Rescind 191—Chapter 101 and adopt the following **new** chapter in lieu thereof:

CHAPTER 101
TRUST DEPOSITS AND TRUST FUNDS

191—101.1(523A) Trust income withdrawals. Trust income may be withdrawn on purchase agreements executed on or after July 1, 2007, as set forth in this chapter, by any preneed seller that is a limited liability corporation that was formed in 2002 for the purpose of purchasing a cemetery from a foreign entity reorganizing under bankruptcy, if the corporation is comprised of six establishments all located within the same county.

191—101.2(523A) Amount of trust income withdrawn. The amount of income withdrawn pursuant to rule 101.1(523A) may not exceed the difference between the amount needed to adjust the trust funds for inflation, as set by the commissioner based on the consumer price index in rule 101.7(523A), and the interest or income earned during the preceding year but, in any event, may not exceed 50 percent of the total interest or income on a calendar-year basis. A portion of trust income must remain in trust and cannot be withdrawn by the preneed seller. This amount is the greater of the following: one-half of the aggregate income and interest credited to the trust during the preceding calendar year; or an amount equal to the consumer price index adjustment for the preceding year.

191—101.3(523A) Allocation of trust income to purchasers' accounts. Income distributions withdrawn from the trust shall be allocated to purchasers' accounts remaining in the trust at the end of the month in which the distribution was made and on the basis that each such account's income balance for that month bears to the aggregate income balances of all such accounts. By September 1, any income not withdrawn pursuant to this chapter shall be allocated to purchasers' accounts remaining in trust at the end of the month in which the allocations were made.

191—101.4(523A) Credit for trust income withdrawn. The early withdrawal of interest or income under this chapter does not affect the purchaser's right to a credit of such interest or income in the event of a

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nonguaranteed price agreement, cancellation of the purchase agreement, or nonperformance by the preneed seller.

191—101.5(523A) Time period during which trust income may be withdrawn. Income withdrawals permitted by this chapter shall be made no later than 180 days after the calendar year in which the income was earned.

191—101.6(523A) Application of contract law. In any situation in which this chapter and the terms and conditions of a purchase agreement do not conflict, the terms and conditions of the purchase agreement shall govern the withdrawal of trust income and interest. The ability to withdraw income and interest may be limited or prohibited by the terms of a purchase agreement. However, in the event of a conflict with the limitations set forth in this chapter, the preneed seller must comply with the requirements of this chapter.

191—101.7(523A) Consumer price index adjustment.

101.7(1) Pursuant to Iowa Code Supplement sections 523A.201(8) and 523A.602(2)“b”(1), the commissioner sets the following inflation adjustment factors for the years listed for the purposes of calculating the amount of interest or income earned on amounts deposited in trust that must remain trust funds as an adjustment for inflation or to adjust the purchase price of merchandise and services in order to calculate the amount of a cancellation refund.

2007	4.1%
2006	2.5%
2005	3.4%
2004	3.3%
2003	1.9%
2002	2.4%
2001	1.6%
2000	3.4%
1999	2.7%
1998	1.6%
1997	1.7%
1996	3.3%
1995	2.5%
1994	2.7%
1993	2.7%
1992	2.9%
1991	3.1%
1990	6.1%
1989	4.6%
1988	4.4%
1987	4.4%

101.7(2) The inflation adjustment factors for years 2008 and later will be set by the commissioner and posted on the commissioner’s Web site.

191—101.8(523A) Cancellation refunds. The requirement set forth in Iowa Code Supplement section 523A.602(2)“b”(1) applies to any purchase agreement executed on or after July 1, 2001.

These rules are intended to implement Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

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ITEM 3. Rescind 191—Chapter 102 and adopt the following **new** chapter in lieu thereof:

CHAPTER 102
WAREHOUSED MERCHANDISE

191—102.1(523A) Funeral and cemetery merchandise delivered to the purchaser or warehoused.

102.1(1) *Applicability.* This chapter applies only to storage existing on or before July 1, 2007, under purchase agreements executed between July 1, 1987, and July 1, 2007. Effective July 1, 2007, warehousing is no longer an alternative to the trust requirements of Iowa Code chapter 523A.

102.1(2) *Approval of storage facilities by commissioner.* If a preneed seller receives approval in writing from the commissioner, the trust requirements of Iowa Code Supplement sections 523A.201 and 523A.202 do not apply, either to payments for outer burial containers made of either polystyrene or polypropylene or to cemetery merchandise delivered to the purchaser or stored in an independent third-party storage facility not owned or controlled by the preneed seller.

191—102.2(523A) Storage facilities. The commissioner shall approve a storage facility's application to be designated as an approved storage facility for purposes of rule 102.1(523A) upon satisfaction of the following conditions:

102.2(1) *Insurance coverage and financial condition.* The applicant must demonstrate that adequate insurance against loss and damage has been purchased and that the applicant's financial condition is commensurate with any financial obligations assumed in the operation of the storage facility. Proof of the applicant's financial condition shall include submission of audited financial statements completed in accordance with generally accepted accounting principles, which shall include the following:

- a. A balance sheet prepared as of a date within 120 days prior to the application; and
- b. For each of the three fiscal years preceding the date of the balance sheet or, if the applicant has been in existence less than three years, for the period of the applicant's existence, a profit and loss statement and any changes in financial position.

102.2(2) *Record-keeping system.* The applicant must demonstrate that the applicant has an adequate record-keeping system that records for each item in storage: an identification and a description; the ownership, name, and address of the preneed seller; an order number; the order date; and the storage date. The record-keeping system also must be able to provide an aggregate listing and numerical totals for the entire storage facility and for each state or province.

102.2(3) *Title.* The storage facility must undertake to deliver a minimum of two copies of some form of title certificate to the preneed seller, with at least one copy marked as the preneed seller's copy and at least one copy marked as the purchaser's copy. Each preneed seller shall be required to deliver at least one copy to the purchaser and to retain one copy in the preneed seller's records. Certificates of ownership should not be issued until the merchandise is stored in substantially complete condition.

102.2(4) *Delivery requirements.*

a. The applicant must undertake to require the purchaser's signature, or the signature of the purchaser's legal representative, prior to the delivery of the cemetery merchandise.

b. The storage facility must undertake not to accept prepayment of delivery expenses or charges. Appropriate written disclosure that delivery costs will be billed at the time of delivery shall be provided to the preneed seller.

102.2(5) *Storage requirements.* The storage facility must demonstrate that the applicant has an adequate storage system that provides both accessibility and protection against damage. The storage facility must undertake that all cemetery merchandise will be substantially complete prior to storage.

102.2(6) *Consent to audits and inspections.* The applicant must file a written consent authorizing audits, reviews and inspections by the commissioner.

102.2(7) *Statutory compliance with other state or provincial laws.* The applicant shall be in compliance with all applicable laws regulating the applicant's activities as a warehouse keeper, manufacturer, supplier, or preneed seller of cemetery merchandise.

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102.2(8) Identification or personalization of merchandise. All cemetery merchandise must be appropriately marked, identified, and described in a manner such that it may be distinguished from other similar items of merchandise, unless the commissioner has given prior written waiver of this requirement upon a showing of good cause. In all instances, the storage facility's storage system shall allow for visual inspection and counting, have storage by type or style, identify the location of the item by a shelf and bin- or slot-type system or reasonable alternative, and keep totals for each type of merchandise item in storage.

102.2(9) Payment of accounts receivable. The applicant shall undertake to require payment of all applicable accounts receivable within 90 days of the purchase of the cemetery merchandise.

102.2(10) Audits and examinations. The commissioner shall have the right to examine or cause to be examined the books, papers, records, memoranda or other documents of the storage facility and stored merchandise for the purpose of verifying compliance with Iowa Code chapter 523A and this chapter. Unless waived by the commissioner in writing, the transportation, meal and lodging expenses of the auditors and examiners shall be reimbursed by the storage facility.

102.2(11) Reports. The commissioner may request reports containing information about the storage program, including but not limited to the following:

- a. A description of the storage facility, including the name, address of the principal business office, state or province of organization, date of organization, type of entity (e.g., corporation or partnership), and the location of all storage facilities;
- b. A description of the storage program; and
- c. A detailed description of all merchandise currently in storage, which shall include all of the following:
 - (1) The date the merchandise was first placed in storage;
 - (2) The full name of the purchaser or the person on whose behalf the merchandise was purchased;
 - (3) The location of the merchandise, which shall include the location within the facility utilizing a numbering system that provides the exact location of each item;
 - (4) The name and address of the preneed seller;
 - (5) The total number of items, by category, in storage at the facility for preneed sellers located in this state; and
 - (6) The total number of items, by category, in storage at the facility.

These rules are intended to implement Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

ITEM 4. Rescind 191—Chapter 103 and adopt the following new chapter in lieu thereof:

CHAPTER 103
LICENSING OF PRENEED SELLERS AND SALES AGENTS

191—103.1(523A) Requirement for a preneed seller license or a sales agent license.

103.1(1) No person may sell or offer to sell cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, unless the person holds an active license.

103.1(2) No person may agree to perform any term of an agreement, whether or not pursuant to a written purchase agreement, to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, unless the person holds an active license.

103.1(3) At the time a purchase agreement is entered into, a person may not accept any payment or funding, including the assignment of ownership of or proceeds from an insurance policy or annuity, related to the purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, in Iowa if the sale of the merchandise or services is subject to Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, unless the person holds an active license. This rule does not prevent payments to an unlicensed person upon the person's delivery of cemetery

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merchandise, funeral merchandise or funeral services after the death of a beneficiary, including the payment of the proceeds of an insurance policy or annuity at the time of death of the insured listed on the insurance policy or annuity.

191—103.2(523A) Application and licensing of preneed seller or sales agent.

103.2(1) *Preneed seller application.* A person that desires to be licensed as a preneed seller must satisfy the following requirements:

- a. Submit a completed application form, designated by the commissioner, as set forth in subrule 103.2(3);
- b. Appoint at least one sales agent, except if the preneed seller is a sole proprietor;
- c. Submit a signed waiver allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code Supplement section 523A.501(3) as amended by 2008 Iowa Acts, Senate File 2349, section 5, and House File 2555, section 47, for each owner and manager of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock who has the ability to control or direct control of trust funds under Iowa Code chapter 523A, as determined by the commissioner;
- d. Provide a financial history, if requested by the commissioner, pursuant to Iowa Code Supplement section 523A.501(4) as amended by 2008 Iowa Acts, Senate File 2349, section 6, and House File 2555, section 48, for each owner and manager of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock;
- e. Provide evidence of a fidelity bond or insurance if required by rule 191—105.5(523A);
- f. Have not committed any act that is grounds for denial under subrule 103.2(4); and
- g. Pay the appropriate license fee as set forth in rule 191—100.4(523A).

103.2(2) *Sales agent application.* An individual that desires to be licensed as a sales agent pursuant to Iowa Code Supplement section 523A.502 as amended by 2008 Iowa Acts, Senate File 2349, section 7, and House File 2555, sections 49 and 50, must satisfy the following requirements:

- a. Be at least 18 years of age;
- b. Be appointed by at least one preneed seller and submit evidence of that appointment;
- c. Submit a completed application form, designated by the commissioner, as set forth in subrule 103.2(3);
- d. Submit a signed waiver allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code Supplement section 523A.501(3) as amended by 2008 Iowa Acts, Senate File 2349, section 5, and House File 2555, section 47;
- e. Have not committed any act that is grounds for denial under subrule 103.2(4); and
- f. Pay the appropriate license fee as set forth in rule 191—100.4(523A).

103.2(3) *Application form.* A person applying for a preneed seller license or sales agent license shall complete an application form designated by the commissioner in accordance with the instructions supplied with the form. The appropriate application form and instructions may be obtained from the commissioner's Web site.

103.2(4) *Approval or denial of applications.*

a. If the application form is not completed according to the instructions, or if all of the information in the instructions or requested by the commissioner is not provided, the commissioner shall send a deficiency letter to the applicant, identifying the problems with the license application and listing any required corrective action. The commissioner shall suspend review of the application until the applicant successfully provides the necessary information. If an applicant does not satisfy the terms of the deficiency letter within two months, the application will expire and a new application form must be submitted.

b. The commissioner may require any documents reasonably necessary to verify the information contained in the application or to verify that the individual making application has the character and competency required to receive a license. The commissioner also may request fingerprints and reimbursement of costs for investigating a criminal history, pursuant to Iowa Code Supplement section 523A.501(3) as amended by 2008 Iowa Acts, Senate File 2349, section 5, and House File 2555, section 47.

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c. The commissioner shall conduct the criminal history data request and other investigations pursuant to Iowa Code Supplement section 523A.502(4) as amended by 2008 Iowa Acts, House File 2555, section 49. The commissioner's investigation of criminal history data and financial history shall be limited to persons who have the ability to control or direct control of trust funds under Iowa Code chapter 523A, as determined by the commissioner.

d. In order to determine whether to approve or deny an application for license, the commissioner shall review all information that is submitted with the application, submitted at the commissioner's request, obtained through criminal history investigation, and obtained through the financial history review, pursuant to Iowa Code Supplement sections 523A.501(3) and 523A.502(4) as amended by 2008 Iowa Acts, House File 2555, sections 47 and 49, respectively.

e. If the commissioner approves the application and accompanying information, the commissioner shall issue a license, the term of which shall be four years.

f. The commissioner may deny a license application based on information received during the application process or on any ground provided to discipline a license in 191—Chapter 105 or Iowa Code chapter 523A.

191—103.3(523A) Change of ownership or sale of business of preneed seller.

103.3(1) If there is a change in the ownership of a preneed seller, including any change of controlling interest in any corporation or other business entity, the preneed seller shall notify the commissioner of the change within 30 days of the sale and shall provide information as requested by the commissioner to obtain a new preneed seller license.

103.3(2) If all or part of a business entity that has a preneed seller license is sold in whole or in part, and the business entity has not canceled the license nor has the purchaser of that entity applied for a new license in the purchaser's name within 30 days of the sale, the license shall automatically terminate. For purposes of this rule, sale of a business entity includes any change of controlling interest in any corporation or other business entity.

103.3(3) Failure to notify the commissioner of a change of ownership or sale of all or part of a business as set forth in this rule may be a ground for penalty under 191—subrule 105.6(10).

191—103.4(523A) License renewal.**103.4(1) License expiration.**

a. Preneed seller licenses expire on the last day of the month of the four-year anniversary of the issue date of the license.

b. Sales agent licenses expire on the last day of the birth month of the licensee four years after the issue date of the license.

103.4(2) Application for renewal. A licensee must submit an application for renewal to the commissioner at least 60 days in advance of the expiration date of the license. The licensee is responsible for renewing the license.

103.4(3) Renewal application form. An application to renew a preneed seller's license or a sales agent's license shall be submitted on a form required by the commissioner, as directed on the commissioner's Web site, and a renewal applicant shall comply with all instructions on the Web site. In addition:

a. The renewal application shall be accompanied by a fee as set out in rule 191—100.4(523A). Failure to include the proper amount shall be cause for suspension of the application pursuant to subrule 103.4(4).

b. A sales agent must have completed the continuing education required by 191—Chapter 104 and submit with the application documentation verifying completion, as directed on the commissioner's Web site.

103.4(4) Deficiencies in the application. If the application form is not completed according to the instructions, or if all of the information in the instructions or requested by the commissioner is not provided, the commissioner will send a deficiency letter to the applicant, identifying the problems with the license application and listing any required corrective action, and the commissioner will suspend review of the application until the applicant successfully completes the application form in accordance with the instructions. If an applicant does not satisfy the terms of the deficiency letter within two months, the

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application shall expire, and a new application form must be submitted. If a licensee fails to submit a timely and sufficient renewal application, the license shall expire.

103.4(5) *Failure to file annual statement.* A sales agent license shall not be renewed if the sales agent did not comply with the requirement to file an annual report, as set forth in 191—paragraph 106.2(3) “a” and Iowa Code Supplement section 523A.502A.

103.4(6) *Inactive license, voluntary surrender and license reinstatement.*

a. If a licensed preneed seller does not have at least one appointed sales agent, or if a sales agent is not appointed with at least one preneed seller, the license shall be inactive until a sales agent has been appointed.

b. A preneed seller licensee or a sales agent licensee that has stated an intent to exit the preneed business may voluntarily surrender the license or request that the commissioner place the licensee’s license on inactive status.

c. A preneed seller or sales agent must request an inactive status from the commissioner or must surrender the license to the commissioner before the renewal due date or the license shall expire.

d. In no event may a license be inactive for more than 12 months.

e. A preneed seller or sales agent may apply for reinstatement of an inactive license up to 12 months after the license expiration date by submitting the following:

(1) An application for reinstatement, which may be obtained from the commissioner’s Web site;

(2) A consent and waiver form required for a background check, if determined necessary by the commissioner;

(3) A financial history for the interim time period after the license became inactive and before the application for reinstatement, if determined necessary by the commissioner;

(4) For a preneed seller, the name of at least one appointed sales agent or, for a sales agent, the name of at least one preneed seller;

(5) For a sales agent, proof of completion of continuing education requirements found in 191—Chapter 104; and

(6) A license fee as set forth in rule 191—100.4(523A), if determined applicable by the commissioner.

f. A preneed seller or sales agent that surrendered a license for a nondisciplinary reason more than 90 days before the expiration date of the license and stated an intent to exit the preneed business may file a request to reinstate the license. The request must be received by the commissioner within 90 days of the date the license was terminated by the commissioner and should include the information set forth in paragraph 103.4(6) “e.” The request will be granted if the preneed seller or sales agent is otherwise eligible to receive the license. If the request is not received within 90 days, the preneed seller or sales agent must apply for a new license.

191—103.5(523A) Denial of license applications or of applications for renewal.

103.5(1) *Notice of denial.* When the commissioner denies an application for an initial preneed seller license or for the renewal of a preneed seller license, the commissioner shall send a denial letter to the applicant by certified mail, return receipt requested, or in the manner of service of an original notice. The denial letter shall serve as notice of the denial and shall explain why the commissioner denied the application.

103.5(2) *Appeal.* An applicant that desires to contest the denial of an application may request a hearing before the commissioner pursuant to 191—Chapter 3 within 30 calendar days of the date the notice of denial is mailed. If a request for hearing is timely made, the commissioner shall promptly issue a notice of contested case hearing on the grounds asserted by the applicant. A failure to timely request a hearing constitutes failure to exhaust administrative remedies.

103.5(3) *Hearings.* License denial hearings under this chapter shall be conducted pursuant to 191—Chapter 3. License denial hearings and all documents related thereto are contested cases open to the public pursuant to Iowa Code chapters 17A and 22. While each party shall have the burden of establishing the matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant’s qualification for licensure.

191—103.6(523A) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance.

103.6(1) The term “reinstatement” as used in this rule means the reinstatement of a suspended license. The term “reissuance” as used in this rule means the issuance of a new license following either the revocation of a license or the forfeiture of a license in connection with a disciplinary matter. This rule does not apply to the reinstatement of an expired or inactive license.

103.6(2) Any preneed seller whose license has been revoked or suspended by order, or that forfeited a license in connection with a disciplinary matter, may apply to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

a. All proceedings for reinstatement or reissuance shall be initiated by the applicant that shall file with the commissioner an application for reinstatement or reissuance of a license. Instructions regarding how to complete and file an application can be found on the commissioner’s Web site.

b. An application for reinstatement or reissuance shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis of revocation, suspension or forfeiture of the applicant’s license no longer exists and that it will be in the public interest for the application to be granted. The burden of proof to establish such facts shall be on the applicant.

c. A preneed seller or sales agent may request reinstatement of a suspended license prior to the end of the suspension term.

d. Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement or reissuance may occur, or if the license was forfeited, an initial application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order of the suspension (notwithstanding paragraph 103.6(2) “c”), revocation, or acceptance of the forfeiture of a license.

103.6(3) All proceedings upon the application for reinstatement or reissuance, including matters preliminary and ancillary thereto, shall be held in accordance with Iowa Code chapter 17A. Such application shall be docketed in the original case in which the original license was suspended, revoked, or forfeited, if a case exists.

103.6(4) An order of reinstatement or reissuance shall be based upon a written decision which incorporates findings of fact and conclusions of law. An order granting an application for reinstatement or reissuance may impose such terms and conditions as the commissioner deems desirable, which may include one or more of the types of disciplinary sanctions provided by 191—Chapter 106, Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555. The order shall be a public record, available to the public, and may be disseminated in accordance with Iowa Code chapter 22.

103.6(5) A request for voluntary forfeiture of a license shall be made in writing to the commissioner. Forfeiture of a license is effective upon submission of the request unless a contested case proceeding is pending at the time the request is submitted. If a contested case proceeding is pending at the time of the request, the forfeiture becomes effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

103.6(6) A license may be voluntarily forfeited in lieu of compliance with an order of the commissioner with the written consent of the commissioner. The forfeiture becomes effective when and upon such conditions as required by order of the commissioner, which may include one or more of the types of disciplinary sanctions provided by 191—Chapter 106, Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555.

103.6(7) When a preneed seller’s license has been suspended for a period of time which extends beyond the preneed seller’s license expiration date, the license will terminate on the license expiration date, and the preneed seller must apply for a new license. If suspension for a period of time ends prior to the preneed seller’s license expiration date, the commissioner shall reinstate the license at the end of the suspension period. The commissioner is not prohibited from bringing an additional immediate action if the preneed seller has engaged in misconduct during the period of suspension.

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191—103.7(252J) Suspension for failure to pay child support.

103.7(1) Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent to the sales agent's last-known address by regular mail.

103.7(2) The notice shall contain the following items:

- a. A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current insurance license in 30 days;
- b. A statement that the sales agent must contact the CSRU to request a withdrawal of the certificate of noncompliance;
- c. A statement that the sales agent's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn;
- d. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 252J.9;
- e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;
- f. A copy of the certificate of noncompliance.

103.7(3) The filing of an application for hearing with the district court will stay all suspension proceedings until the commissioner is notified by the district court of the resolution of the application.

103.7(4) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current license 30 days after the notice is issued.

103.7(5) Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with rules issued by the commissioner. All fees required for license renewal or license reinstatement must be paid by sales agents, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to this subrule.

191—103.8(261) Suspension for failure to pay student loan.

103.8(1) The commissioner shall deny the issuance or renewal of a sales agent license upon receipt of a certificate of noncompliance from the college student aid commission (CSAC) according to the procedures set forth in Iowa Code sections 261.126 and 261.127. In addition to the procedures contained in those sections, this rule shall apply.

103.8(2) Upon receipt of a certificate of noncompliance from the CSAC according to the procedures set forth in Iowa Code sections 261.126 and 261.127, the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current license will be suspended 60 days after the date of the notice. Notice shall be sent to the sales agent's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed sales agent may accept service personally or through authorized counsel.

103.8(3) The notice shall contain the following items:

- a. A statement that the commissioner intends to deny the sales agent's application or request for renewal or suspend the sales agent's license in 60 days;
- b. A statement that the sales agent must contact the CSAC to request a withdrawal of the certificate of noncompliance;
- c. A statement that the sales agent's application or request for renewal will be denied or the sales agent's license will be suspended if the certificate of noncompliance is not withdrawn or, if the current license is on suspension, a statement that the sales agent's license will be revoked;
- d. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 261.127;

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e. A statement that the filing of an application with the district court will stay the proceedings of the commissioner;

f. A copy of the certificate of noncompliance.

103.8(4) The effective date of revocation or suspension of a sales agent license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days after service of the notice upon the sales agent.

103.8(5) In the event an applicant or licensed sales agent timely files a district court action pursuant to Iowa Code section 261.127, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a sales agent license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

103.8(6) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSAC or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current sales agent license 60 days after the notice is issued.

103.8(7) Upon receipt of a withdrawal of the certificate of noncompliance from the CSAC, suspension proceedings shall halt and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with rules issued by the commissioner. All fees required for license renewal or license reinstatement must be paid by sales agents, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code section 261.126.

103.8(8) The commissioner shall notify the sales agent in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a sales agent license, and shall similarly notify the sales agent when the sales agent's license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

103.8(9) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the CSAC for the sole purpose of identifying a sales agent subject to enforcement under Iowa Code chapter 261.

These rules are intended to implement Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

ITEM 5. Rescind 191—Chapter 104 and adopt the following **new** chapter in lieu thereof:

CHAPTER 104
CONTINUING EDUCATION FOR SALES AGENTS

191—104.1(523A) Continuing education requirements. For each license term, each licensed sales agent shall be required to complete a minimum of eight credits of continuing education approved by the commissioner. At least two credits, to be known as the ethics and legal requirements continuing education requirement, must cover subjects relating to business ethics, the legal requirements of Iowa Code chapter 523A, 191—Chapters 100 through 106, and other relevant federal and state laws and rules, such as the Federal Trade Commission Funeral Rule (16 CFR Part 453).

191—104.2(523A) Acceptable areas of continuing education. The categories of acceptable continuing education include the following:

104.2(1) Ethical behavior related to the death care industry.

104.2(2) Good business practices and procedures related to funeral directors, funeral establishments, cremation establishments and cemeteries.

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104.2(3) Legal compliance practices and procedures related to the death care industry, including the sale of funeral merchandise, funeral services, cemetery merchandise and purchase agreements subject to Iowa Code chapter 523A.

104.2(4) Funeral merchandise, funeral services and cemetery merchandise and the regulation of them.

104.2(5) Life insurance and annuity products and the regulation of them.

104.2(6) The Federal Trade Commission Funeral Rule (16 CFR Part 453).

104.2(7) Regulations from the Occupational Safety and Health Administration, the Americans with Disabilities Act and the Environmental Protection Agency.

104.2(8) The estate recovery program and regulations.

104.2(9) Mortuary science law, and public health and technical standards, requirements and issues regarding the handling and interment of deceased human remains.

104.2(10) Business management, accounting and record-keeping practices.

104.2(11) Computer equipment, systems and software.

104.2(12) Other subject areas as approved by the commissioner.

191—104.3(523A) Academic coursework.

104.3(1) Academic coursework that meets the criteria set forth in this chapter is acceptable.

104.3(2) Each credit hour of academic coursework successfully completed by a licensee shall be credited as 1.5 hours of continuing education. This multiplier shall be used only once per biennium for identical or substantially similar presentations.

104.3(3) Continuing education credit equivalents are as follows:

1 academic semester hour = 10 continuing education credits

1 academic trimester hour = 8 continuing education credits

1 academic quarter hour = 7 continuing education credits

191—104.4(523A) Effective date. Continuing education is a prerequisite for the renewal of any sales agent license for which a renewal application is filed on or after July 1, 2008.

191—104.5(523A) Compliance period. A sales agent's continuing education compliance period shall coincide with the sales agent's license term.

191—104.6(523A) Denial of sales agent license renewal application. The commissioner may deny a sales agent license renewal application that does not demonstrate compliance with the rules of this chapter.

191—104.7(523A) Disqualification and replacement of credits. If, as a result of a review, the commissioner determines that certain continuing education coursework does not qualify for credit, a sales agent may be given an opportunity to submit new credits to replace any credits that are not allowed.

191—104.8(523A) Current mailing address. A sales agent's failure to provide a current mailing address to the commissioner and the resulting failure to receive notices or letters from the commissioner regarding continuing education requirements and reporting shall not absolve the sales agent from the requirements of this chapter and shall not provide good cause for any waiver or exemption.

191—104.9(523A) Proof of completion of continuing education requirements. A sales agent is required to maintain a record of all completed continuing education courses by keeping for four years the original certificates of completion and a description and outline of the course attended.

191—104.10(523A) Standards for continuing education activities. A continuing education activity that meets all of the following criteria is appropriate for continuing education credit.

104.10(1) The activity constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

104.10(2) The activity pertains to subject matters which integrally relate to the sale of funeral merchandise, funeral services, cemetery merchandise and purchase agreements subject to Iowa Code chapter 523A

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including, but not limited to, continuing education subject matter approved for funeral directors and insurance agents;

104.10(3) The activity is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program;

104.10(4) The activity fulfills stated program goals and objectives; and

104.10(5) The person conducting or sponsoring the activity provides proof of attendance to attendees.

191—104.11(523A) Qualifications of presenters and proof of attendance. Proof of attendance at a continuing education activity shall, at a minimum, include the following:

1. The date of the activity, the location of the activity, the course title, and the identity and qualifications of the presenter(s);

2. The number of program contact credits; and

3. A certificate of completion or evidence of successful completion of the course provided by the person conducting or sponsoring the activity.

191—104.12(523A) Reviews.

104.12(1) The commissioner may review licensees and persons conducting or sponsoring continuing education activities to ensure compliance with this chapter.

104.12(2) At the time of a review, the information requested from persons conducting or sponsoring continuing education activities shall include, but not be limited to, the following:

a. The qualifications of presenters.

b. Records documenting licensees' attendance at the activity.

c. A course description.

d. Official school transcripts indicating licensees' successful completion of an academic course.

104.12(3) Upon notice of a continuing education review, a sales agent shall provide the following information to the commissioner:

a. The date and location of the course, course title, course description, course outline, course schedule, names and qualifications of the presenter(s), and the method of presentation or a program brochure or booklet which includes all the information required in this paragraph;

b. The number of contact credit hours attended; and

c. The individual certificate of completion issued or evidence of successful completion of the course from the person conducting or sponsoring the continuing education activity.

191—104.13(523A) Exemption. This rule does not apply to a licensed funeral director or licensed insurance sales agent.

These rules are intended to implement Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

ITEM 6. Rescind 191—Chapter 105 and adopt the following **new** chapter in lieu thereof:

CHAPTER 105

STANDARDS OF CONDUCT AND PROHIBITED PRACTICES

191—105.1(523A) Purpose. This chapter is intended to establish certain minimum standards and guidelines of conduct for preneed sellers and sales agents by identifying required actions and prohibited acts or practices.

191—105.2(523A) Numbering purchase agreements. Preneed sellers shall assign numbers, in sequential order, to each purchase agreement sold during a calendar year.

105.2(1) Prenumbered contracts are not required. If a contract is not prenumbered, the sales agent shall write the contract number on the purchase agreement at the time it is executed.

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105.2(2) The copy of the purchase agreement given to the purchaser shall include the contract number assigned to the purchase agreement.

105.2(3) If a correction to the contract number is required, the correction shall be recorded in the sales logs required by subrule 105.3(3), and documentation that retains evidence of the initial number used shall be maintained.

105.2(4) A numbering system that consists of a two-part number separated by a hyphen would satisfy this rule. The first portion of the number would be the date the contract was written. The second portion of the number would be sequential and indicate the number of contracts executed by the preneed seller, to date, in the applicable calendar year. A preneed seller with multiple locations may use a prefix to identify each location by number. A preneed seller with multiple sales agents may use a numerical suffix to identify the sales agent.

191—105.3(523A) Records maintenance.

105.3(1) *Transaction records to be kept by preneed sellers.* A preneed seller shall document all customer transactions and maintain accurate copies and records of all purchase agreements. If no other legal provision governs record retention, a preneed seller shall keep all customer records for a minimum of three years after the date of the death of the beneficiary. The preneed seller shall keep records and the identity of individuals in the records confidential.

105.3(2) *Deposit records to be kept by preneed sellers.* If purchase payments made to a preneed seller are commingled and deposited with funds not related to a purchase agreement subject to Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, or if deposits involve more than one purchase agreement, the preneed seller shall retain a detailed summary of each deposit. This information shall be maintained and shall be available for inspection by the commissioner for a minimum of four years after the deposit.

105.3(3) *Sales log to be kept by preneed sellers.* Preneed sellers shall maintain a sales log for purposes of assigning numbers to purchase agreements. The sales log shall be maintained for a minimum of four years after the date of sale.

105.3(4) *Sales log to be kept by sales agents.* A sales agent shall maintain a sales log for a minimum of four years. The sales log shall include all of the information required for the sales agent's annual report set forth in subrule 105.4(2).

191—105.4(523A) Annual reports.

105.4(1) *Annual reports by preneed sellers.* A licensed preneed seller shall file a completed annual report form with the commissioner on or before April 1 each year. The form and instructions may be obtained through the commissioner's Web site. The report shall include a list of contracts sold during the year covered by the report, including the date of each contract, the total purchase price, the name of the purchaser, the name of the beneficiary and, for each contract sold after July 1, 2007, the number assigned to the contract. Along with submitting the report, the preneed seller shall submit a filing fee, as set forth in Iowa Code Supplement section 523A.204.

105.4(2) *Annual reports by sales agents.* A licensed sales agent shall file a completed annual report form with the commissioner on or before April 1 each year, pursuant to Iowa Code Supplement section 523A.502A. The form and instructions may be obtained through the commissioner's Web site. The report shall include the following:

- a. Names of applicable licensed preneed sellers and their license numbers; and
- b. A list of contracts sold during the year covered by the report, including the date of the contract, the total purchase price, the name of the purchaser and the name of the beneficiary and, for each contract sold after July 1, 2007, the number assigned to each contract. If the sales agent was appointed by more than one preneed seller, the list of contracts required by this paragraph shall be divided according to each preneed seller.

105.4(3) *Failure to file timely.* If a preneed seller or sales agent fails to file an annual report as required by this subrule on or before the date the annual report is due, the penalties of 191—subrule 106.2(3) shall apply. Additional sanctions pursuant to rule 105.6(523A) and 191—Chapter 106 also may be imposed.

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191—105.5(523A) Fidelity bond or insurance. A preneed seller shall obtain and maintain a fidelity bond or similar insurance in an amount not less than \$50,000 to protect against the loss of purchaser payments not placed in trust, as required by Iowa Code Supplement section 523A.201(5) unless the preneed seller only uses the trusting alternatives set forth in Iowa Code Supplement section 523A.401 as amended by 2008 Iowa Acts, House File 2555, section 44; Iowa Code Supplement section 523A.402 as amended by 2008 Iowa Acts, House File 2555, section 45; Iowa Code section 523A.403; Iowa Code Supplement section 523A.404; and Iowa Code Supplement section 523A.405 as amended by 2008 Iowa Acts, Senate File 2349, section 4, and House File 2555, section 46, or unless the preneed seller deposits 100 percent of each payment into a trust fund. This requirement may be satisfied by a cash deposit held and administered in trust for the benefit and protection of purchasers and beneficiaries in this state, pursuant to a trust agreement filed with and acceptable to the commissioner.

191—105.6(523A) Grounds for discipline. The commissioner may impose sanctions as set forth in 191—Chapter 106 if the commissioner finds that a licensee or that an owner, partner, member, director, shareholder or manager of a licensed business entity has violated or failed to comply with Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555, or any associated rules or implementing orders, including but not limited to the following acts or practices:

105.6(1) *Fraudulent or deceptive applications.* Engaging in fraudulent or deceptive acts in procuring a license, including but not limited to:

- a. False representations of a material fact, whether by conduct or by false or misleading statements;
- b. Concealing or omitting anything that should have been disclosed or included with the application;
- c. Filing a false identification;
- d. Filing an untrue certification or affidavit; or
- e. Falsifying documents.

105.6(2) *Conviction of a criminal offense.* Conviction of a criminal offense, in any jurisdiction, involving dishonesty or a false statement, including but not limited to fraud, theft, misappropriation of funds, falsification of documents, deceptive acts or practices, or other related offenses. “Conviction” shall include a plea of guilty or a finding of guilt, and shall include a deferred judgment.

105.6(3) *Fraudulent or deceptive practices.* Engaging in any act or practice that violates Iowa Code section 523A.701 or 523A.702, or Iowa Code Supplement section 523A.703, whether or not actual harm or injury occurs, including but not limited to:

- a. Making untrue or improbable statements in advertisements;
- b. Falsifying business records; or
- c. Misappropriating funds.

105.6(4) *Insolvency or financial condition.* Being or becoming insolvent or of unsound financial condition, the determination of which shall be based on but not limited to the following factors:

- a. The licensee’s or license applicant’s net worth;
- b. Whether a financial institution has closed or otherwise taken adverse action against an account held by or on behalf of the licensee or license applicant;
- c. The issuance by the licensee or license applicant of insufficient funds checks or otherwise overdrawing a business or trust account;
- d. Untimely payment by the licensee or license applicant of business obligations in a manner that threatens the operation of the business;
- e. Untimely placement by the licensee of consumer funds into trust;
- f. Failure of the licensee or license applicant to pay sales, unemployment or other tax owed in the course of business; or

g. Any other act, practice or omission that provides a reasonable basis to question the ability of the licensee or license applicant to comply with the requirements of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, and related regulations.

105.6(5) *Unethical, harmful or detrimental conduct.* Engaging in any act or practice which may be harmful or detrimental to the public, whether or not actual harm or injury occurs, while engaged in activities regulated

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by Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, or materially related to such activity, including but not limited to:

- a. Encouraging cancellation of a purchase agreement if not in the best interests of the beneficiary;
- b. Failure to leave a residence when requested to do so;
- c. Intimidation or physical abuse, including improper sexual contact or conduct; or
- d. Any other act or practice that takes unfair or unreasonable advantage of the vulnerability of a client or prospective client based on age, poor health, infirmity, impaired understanding, restricted mobility, or disability.

105.6(6) *Failure to maintain records.* Failure to maintain records as required by Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, or any associated rules or orders.

105.6(7) *Failure to cooperate with an examination or investigation.* Failure to submit to an examination, failure to comply with a reasonable written request of an examiner, or failure to cooperate with an investigation conducted by the commissioner as required by Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555, or any associated rules or orders.

105.6(8) *Late filings or the failure to submit a report.* Filing reports after the filing deadline or failing to file a report as required by Iowa Code chapter 523A or any associated rules or orders.

105.6(9) *Inability to perform.* A preneed seller's failing to be able to provide the cemetery merchandise, funeral merchandise, funeral services, or combination thereof which the licensee purports to sell, including but not limited to failing to employ or have a contractual arrangement with at least one person who is licensed to perform mortuary science services, as described in Iowa Code chapter 156.

105.6(10) *Sale of business without notice.* Selling all or part of a licensee's business without proper notice to the commissioner, pursuant to rule 191—103.3(523A).

105.6(11) *Improper sale or transfer of purchase agreements.* Selling or transferring purchase agreements as part of the sale of a business or the assets of a business, if an audit expressing the auditor's opinion of the adequacy of funding related to the purchase agreements to be sold or transferred has not been performed by a certified public accountant and filed with the commissioner, as required by Iowa Code Supplement section 523A.207.

105.6(12) *Sales prohibited by order.* The applicant or licensee has been named in an order issued pursuant to Iowa Code Supplement section 523A.807(3) as amended by 2008 Iowa Acts, House File 2555, section 52.

105.6(13) *Failure to complete continuing education.* Failure of a licensee to timely complete the continuing education required for license renewal.

105.6(14) *Law violations.* Violating any state or federal law applicable to the conduct of the applicant's or licensee's business including, but not limited to, the following:

- a. The provisions of Iowa Code chapter 156 pertaining to the licensure of funeral directors in the state of Iowa;
- b. Regulations promulgated by the Federal Trade Commission relating to funeral services, or funeral or cemetery merchandise, or funeral or cremation establishments;
- c. Applicable tax or public health laws, ordinances or regulations; or
- d. Laws, rules, ordinances, or regulations occurring outside of Iowa if the commissioner determines that such violation may adversely implicate the licensee's or applicant's compliance with Iowa laws, rules, orders, ordinances, or regulations.

105.6(15) *Unsafe practice.* Having any impairment, drug or alcohol addiction, or other act, conduct or condition which adversely impacts the licensee's ability to perform in a safe, competent manner.

105.6(16) *Failure to maintain fidelity bond or similar insurance.* A preneed seller's failure to maintain a fidelity bond or similar insurance as required by rule 105.5(523A) and Iowa Code Supplement section 523A.201(5).

105.6(17) *Responsibility for sales activities of others.* A preneed seller's consent or acquiescence to violation of 191—Chapters 100 through 106, Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, or 2008 Iowa Acts, Senate File 2349 and House File 2555, by any person acting on the preneed seller's behalf.

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191—105.7(523A) Prohibition on sales activities and practices without a license or without an appointment.

105.7(1) License required. No person shall advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than 100 days following the initial payment of the account unless the person either:

a. Holds an active preneed seller license issued by the commissioner pursuant to Iowa Code Supplement section 523A.501 as amended by 2008 Iowa Acts, Senate File 2349, sections 5 and 6, and House File 2555, section 48; or

b. Holds an active sales agent license issued by the commissioner pursuant to Iowa Code Supplement section 523A.502 as amended by 2008 Iowa Acts, Senate File 2349, section 7, and House File 2555, sections 49 and 50, and the person is an appointed sales agent of a person holding a preneed seller license issued by the commissioner pursuant to Iowa Code Supplement section 523A.501 as amended by 2008 Iowa Acts, Senate File 2349, sections 5 and 6, and House File 2555, section 48.

105.7(2) Prohibited activities. A person to whom a license has not been issued by the commissioner, a licensee whose license has expired, is inactive, or is suspended, or a sales agent who is not appointed by a preneed seller, may not:

a. Conduct any of the activities for which a license is required pursuant to Iowa Code chapter 523A or rule 191—103.1(523A);

b. Post or display the licensee's license;

c. Use a license certificate or a license number;

d. Agree to perform any term of an agreement, whether or not pursuant to a written purchase agreement, to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, if the sale of the merchandise or services is subject to Iowa Code chapter 523A and the sale is after the renewal date of the license;

e. Execute an agreement or agree to perform any term of an agreement or, unless the agreement was entered into while the licensee had an active license issued by the commissioner, accept any payment or funding, including the assignment of ownership of or proceeds from an insurance policy or annuity, whether or not pursuant to a written purchase agreement, related to the purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, if the sale of the merchandise or services is subject to Iowa Code chapter 523A and the sale is after the renewal date of the license. This rule does not prevent payments to an unlicensed person upon the person's delivery of cemetery merchandise, funeral merchandise or funeral services after the death of a beneficiary, including the payment of the proceeds of an insurance policy or annuity at the time of death of the insured listed on the insurance policy or annuity.

These rules are intended to implement Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

ITEM 7. Rescind 191—Chapter 106 and adopt the following new chapter in lieu thereof:

CHAPTER 106
DISCIPLINARY PROCEDURES

191—106.1(523A) Investigations. The commissioner is authorized by Iowa Code section 17A.13(1) and Iowa Code Supplement section 523A.803 to conduct such investigations as the commissioner deems necessary to determine whether any person has violated or is about to violate Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555. The commissioner is authorized to issue and enforce subpoenas to compel testimony and to compel the production of books and records, as more fully described in Iowa Code Supplement section 523A.803. Upon the commissioner's determination that probable cause exists to commence a disciplinary proceeding, the procedures contained in 191—Chapter 3 shall apply.

191—106.2(17A,523A) Penalties. Persons violating Iowa Code chapter 523A or rules adopted or orders issued pursuant thereto may be subject to one or more of the following penalties.

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106.2(1) Criminal penalties. A person who willfully violates Iowa Code Supplement section 523A.501(1), concerning the requirement for a preneed seller license, or Iowa Code Supplement section 523A.502(1), concerning the requirement for a sales agent license, is guilty of a Class D felony. Licensed and unlicensed persons who violate other provisions of Iowa Code chapter 523A and rules adopted or orders issued pursuant to Iowa Code chapter 523A including, but not limited to, a failure to properly place trust funds into trust, pursuant to Iowa Code Supplement sections 523A.201, 523A.202, and 523A.404, and Supplement section 523A.405 as amended by 2008 Iowa Acts, Senate File 2349, section 4, and House File 2555, section 46, are subject to prosecution for crimes including, but not limited to, fraudulent practice under Iowa Code Supplement section 523A.703, theft under Iowa Code chapter 714, or ongoing criminal conduct under Iowa Code chapter 706A. 191—Chapters 100 through 106 do not limit the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

106.2(2) Consumer fraud Act. A violation by a licensed or unlicensed person of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555, 191—Chapters 100 through 106, or an order issued pursuant to those chapters, is a violation of the Iowa consumer fraud Act, Iowa Code sections 714.16 and 714.16A.

106.2(3) Administrative sanctions.

a. Pursuant to Iowa Code Supplement sections 523A.204(4) and 523A.502A, the failure of a licensee to timely file an annual report shall result in an administrative penalty of \$500. The license is suspended on the date the annual report was due until the overdue report is filed and the administrative penalty paid. The licensee is not authorized to solicit or execute any purchase agreement under Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, until the license has been reinstated.

b. If the commissioner issues or renews a license and subsequently determines that payment for the license or renewal was returned by a bank without payment to the commissioner, or that the credit card company does not approve or cancels or refuses amounts charged to the credit card, the license shall be immediately suspended until the payments are made and any fees or penalties charged by the commissioner are paid, at which time the license may be reinstated at the request of the applicant.

c. If the commissioner issues or renews a sales agent license and subsequently determines that the sales agent is not appointed by a preneed seller, the license shall be immediately suspended until the sales agent obtains such an appointment and provides satisfactory evidence to the commissioner of the appointment, at which time the license may be reinstated at the request of the sales agent.

d. The commissioner may impose the following disciplinary sanctions, alone or in combination, against a licensee or as a condition of licensure of an applicant for an initial or renewal license:

- (1) Issue a warning letter or a letter of reprimand;
- (2) Require additional education or training;
- (3) Order mediation pursuant to Iowa Code Supplement section 523A.804;
- (4) Issue a cease and desist order pursuant to Iowa Code section 523A.805 or Iowa Code Supplement section 523A.807 as amended by 2008 Iowa Acts, House File 2555, section 52;
- (5) Require certain specified procedures or methods of operation;
- (6) Order the payment of consumer restitution;
- (7) Place a licensee on probationary status with or without the imposition of reasonable conditions to control or monitor conduct, such as periodic reports;
- (8) Refuse to issue or renew a license;
- (9) Suspend a license for an indefinite or specific period of time;
- (10) Revoke a license;
- (11) Accept the voluntary surrender of a license;
- (12) Impose costs associated with the commissioner's investigation and enforcement activities;
- (13) Impose civil penalties pursuant to Iowa Code Supplement section 523A.807 as amended by 2008 Iowa Acts, House File 2555, section 52, for violation of Iowa Code Supplement section 523A.201 or 523A.202; Iowa Code Supplement section 523A.401 as amended by 2008 Iowa Acts, House File 2555, section 44; Iowa Code Supplement section 523A.402 as amended by 2008 Iowa Acts, House File 2555, section 45; Iowa Code section 523A.403; Iowa Code Supplement section 523A.404; Iowa Code Supplement section 523A.405 as

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amended by 2008 Iowa Acts, Senate File 2349, section 4, and House File 2555, section 46; Iowa Code Supplement section 523A.501 as amended by 2008 Iowa Acts, Senate File 2349, sections 5 and 6, and House File 2555, sections 47 and 48; or Iowa Code Supplement section 523A.502 as amended by 2008 Iowa Acts, Senate File 2349, section 7, and House File 2555, sections 49 and 50;

(14) Any other sanction allowed by law, as the commissioner deems appropriate.

e. A person with an inactive, expired, or suspended license is subject to disciplinary action, injunctive action, criminal sanctions and any other available legal remedies in the event of any violation of Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, 2008 Iowa Acts, Senate File 2349 and House File 2555, or any rules or orders adopted thereto.

f. In addition, or as an alternative to the administrative process described in these rules, the commissioner may seek an injunction in district court, refer the matter for criminal prosecution, enter into a consent agreement, issue an informal cautionary letter, refer the matter to the attorney general, or refer the matter to a licensing entity with regulatory authority and jurisdiction over the unlicensed person, such as the mortuary science board established under Iowa Code chapter 156.

g. The following factors may be considered by the commissioner in determining the nature and severity of the disciplinary sanction to be imposed:

(1) The facts of the particular violation, such as the circumstances leading to the violation, the severity of the infraction, and the clarity of the issues, laws and rules involved;

(2) Evidence that the infraction is not an isolated event and is part of a widespread practice;

(3) Evidence that the acts or practices were willful and intentional;

(4) The economic benefits gained by the licensee or applicant as a result of the infraction;

(5) Evidence that the infraction occurred while the licensee was on probation or had an inactive or suspended license;

(6) The number of prior warning letters or reprimand letters;

(7) The number of complaints;

(8) The number of prior violations, especially evidence of repetitive violations of a like kind;

(9) The seriousness of prior complaints or violations;

(10) The length of time since the unlawful practice occurred;

(11) Whether the violation involved an element of deception;

(12) Whether the unlawful practice violated a prior order of the commissioner, court order, cease and desist agreement, consent order, or similar document;

(13) Whether the person acted in bad faith;

(14) The extent to which the licensee or applicant cooperated with the commissioner;

(15) Evidence of reform or remedial action and whether reform or remedial action occurred prior to the commissioner's involvement with the fact situation;

(16) The amount of restitution paid or to be paid;

(17) The risk of harm created by the acts or practices involved in the infraction;

(18) The public interest in ensuring competency and a high standard of ethical and professional conduct by licensees;

(19) The public interest in protecting consumers and preventing the acts or practices involved in the infraction;

(20) Whether the penalty will act as a substantial deterrent and reduce the likelihood of future violations; and

(21) Any other extenuating facts or other countervailing considerations.

191—106.3(17A,523A) Administrative procedures.

106.3(1) Notice of sanctions. If the commissioner finds cause to impose a sanction against a person pursuant to Iowa Code chapter 523A or subrule 106.2(3), the commissioner shall provide notice to the person. Delivery of the notice shall be accomplished in the manner set out in 191—paragraphs 3.5(1) “a” and “b.” The notice shall include the following:

a. A statement of the legal authority and jurisdiction under which the order would be issued;

b. Reference to the particular sections of the statutes and rules involved;

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- c. A short, plain statement of the alleged unlawful practices;
- d. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 523A, including any required restitution;
- e. Notice of the unlicensed person's right to a hearing and the time frame in which hearing must be requested; and
- f. The address to which written request for hearing must be made.

106.3(2) Requesting a hearing regarding sanctions imposed. If the commissioner imposes any administrative sanctions against a person pursuant to Iowa Code chapter 523A or subrule 106.2(3), the person may request a hearing pursuant to 191—Chapter 3 within 30 days of receipt of the notice. Applicable procedures of this chapter, of 191—Chapter 3, and of Iowa Code chapter 17A shall apply. A failure to timely request a hearing shall constitute a failure to exhaust administrative remedies. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal delivery to the commissioner's office.

106.3(3) If a request for hearing is not timely made, the commissioner may issue an order imposing the administrative penalty and requiring compliance with Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, as described in the notice. The order may be served in the same manner as the notice of intent to impose administrative penalty, and may additionally be provided in a manner reasonably calculated to provide actual notice.

106.3(4) If a request for hearing is timely made, the commissioner shall issue a notice of hearing, following the procedures applicable to a contested case in 191—Chapter 3. Hearings are open to the public.

106.3(5) A person may waive the right to hearing and all attendant rights and enter into a consent order imposing an administrative penalty and requiring compliance with Iowa Code chapter 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555, at any stage of the proceeding upon mutual consent of the commissioner.

106.3(6) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22.

106.3(7) A person aggrieved by the commissioner's issuance of an administrative order, including an order imposing a civil penalty, may seek judicial review in accordance with Iowa Code section 17A.19.

These rules are intended to implement Iowa Code chapters 17A, 22, and 523A, 2007 Iowa Acts, Senate File 559, and 2008 Iowa Acts, Senate File 2349 and House File 2555.

ARC 6915B

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 17A.3(1)"b," Iowa Code Supplement section 16.5(1)"r," and 2008 Iowa Acts, Senate File 2354, the Iowa Finance Authority proposes to rescind Chapter 27, "Military Service Member Home Ownership Assistance Program," Iowa Administrative Code, and adopt a new Chapter 27 with the same title.

The purpose of this new chapter is to implement 2008 Iowa Acts, Senate File 2354.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers.

The Authority will receive written comments on the proposed chapter until 4:30 p.m. on July 22, 2008. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des

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Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to mark.thompson@iowa.gov.

The Authority anticipates that it may make changes to the proposed chapter based on comments received from the public.

These rules are intended to implement Iowa Code Supplement section 16.5(1)“r” and 2008 Iowa Acts, Senate File 2354.

This chapter was also Adopted and Filed Emergency and is published herein as **ARC 6913B**. The content of that submission is incorporated here by reference.

ARC 6917B

IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 97B.4 and 97B.15, the Iowa Public Employees’ Retirement System (IPERS) hereby gives Notice of Intended Action to amend Chapter 6, “Covered Wages,” Chapter 14, “Death Benefits and Beneficiaries,” and Chapter 16, “Qualified Domestic Relations Orders and Other Assignments,” Iowa Administrative Code.

IPERS proposes these amendments to help IPERS better conform to IRS plan qualification requirements; to help IPERS administer the new beneficiary revocation law at Iowa Code Supplement section 598.20B with minimum burden and expense; and to clarify IPERS’ procedures for naming of successor alternate payees and the paying of death benefits to beneficiaries of divorced members.

There are no waiver provisions included in the proposed amendments.

Any person may make written suggestions or comments on the proposed amendments on or before July 22, 2008. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-3081. Comments may also be submitted by fax to (515)281-0045 or by E-mail to info@ipers.org.

A public hearing will be held on July 22, 2008, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Persons who attend the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

These amendments are intended to implement Iowa Code sections 97B.4 and 97B.15.

The following amendments are proposed.

ITEM 1. Rescind subrule 6.3(12) and adopt the following **new** subrules:

6.3(12) Limitations on benefits and contributions.

a. Section 415(b) limitations on benefits. A member may not receive an annual benefit that exceeds the dollar amount specified in Section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in Internal Revenue Code Sections 415(b) and 415(d). For purposes of applying the limits under Internal Revenue Code Section 415(b) (Limit), the following will apply:

(1) With respect to a member who does not receive a portion of the member’s annual benefit in a lump sum:

1. The member’s Limit will be applied to the member’s annual benefit in the first limitation year without regard to any automatic cost-of-living increases;

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2. To the extent the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost-of-living increases under the IPERS trust fund until such time as the benefit plus the accumulated increases are less than the applicable Limit; and

3. Thereafter, in any subsequent limitation year, the member's annual benefit including any automatic cost-of-living increase shall be tested under the then applicable benefit Limit including any adjustment to the Internal Revenue Code Section 415(b)(1)(A) dollar limit under Internal Revenue Code Section 415(d) (cost-of-living adjustments) and the regulations thereunder; and

(2) With respect to a member who receives a portion of the member's annual benefit in a lump sum:

1. The member's applicable Limit shall be applied taking into consideration automatic cost of living increases as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations; and

2. In no event shall a member's annual benefit payable under the system in any limitation year be greater than the Limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder. If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the assumptions required by Treasury Regulations, including the mortality table specified in Revenue Ruling 2001-62 or Revenue Ruling 2007-67, as applicable.

b. *Section 415(c) limitations on contributions and other member additions.* Member contributions and other additions paid to the system may not exceed the annual limits on contributions and other additions allowed by Internal Revenue Code Section 415(c). For purposes of applying these limits, the definition of compensation, where applicable, will be compensation as defined in Treasury Regulation Section 1.415(c)-2(d)(3), or successor regulation. The foregoing definition of compensation will exclude member contributions picked up under Internal Revenue Code Section 414(h)(2) and, for plan years beginning after December 31, 1997, compensation will include the amount of any elective deferrals, as defined in Internal Revenue Code Section 402(g)(3) and, any amount contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Internal Revenue Code Section 125 or 457 and, for plan years beginning on and after January 1, 2001, pursuant to Internal Revenue Code Section 132(f)(4).

c. *Limitation year.* The limitation year is the calendar year.

6.3(13) *Limitations on compensation used for benefit computations and for other Internal Revenue Code purposes.* Effective January 1, 1997, the annual compensation of a member taken into account for computing benefits and for testing purposes under any of the applicable sections of the Internal Revenue Code shall not exceed the applicable amount set forth in Internal Revenue Code Section 401(a)(17), as adjusted under Internal Revenue Code Section 401(a)(17)(b), and any federal regulations promulgated pursuant to that section. Furthermore, the annual compensation of a member, taken into account in computing benefits and testing under any of the applicable sections of the Internal Revenue Code, shall not exceed the amount set forth in Treasury Regulation Section 1.415(c)-2(e)(3). The foregoing sentences shall not be deemed to permit the maximum amount of wages of a member taken into account for any other purpose under Iowa Code chapter 97B to exceed the maximum covered wage ceiling under Iowa Code section 97B.1A(26).

ITEM 2. Renumber subrule **6.3(13)** as **6.3(14)**.

ITEM 3. Amend subrule 14.3(1) as follows:

14.3(1) *Designation of beneficiaries.* To designate a beneficiary, the member must complete an IPERS designation of beneficiary form, which must be filed with IPERS. The designation of a beneficiary by a retiring member on the application for monthly benefits revokes all prior designation of beneficiary forms. IPERS may consider as valid a designation of beneficiary form filed with the member's employer prior to the death of the member, even if that form was not forwarded to IPERS prior to the member's death. If a retired member is reemployed in covered employment, the most recently filed beneficiary form shall govern the payment of all death benefits for all periods of employment. Notwithstanding the foregoing sentence, a reemployed IPERS Option 4 or 6 retired member may name someone other than the member's contingent annuitant as beneficiary, but only for lump sum death benefits accrued during the period of reemployment

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and only if the contingent annuitant has died or has been divorced from the member before the period of reemployment unless a qualified domestic relations order (QDRO) directs otherwise. If a reemployed IPERS Option 4 or 6 retired member dies without filing a new beneficiary form, the death benefits accrued for the period of reemployment shall be paid to the member's contingent annuitant, unless the contingent annuitant has died or been divorced from the member. If the contingent annuitant has been divorced from the member, any portion of the lump sum death benefits awarded in a ~~qualified domestic relations order~~ QDRO shall be paid to the contingent annuitant as alternate payee, and the remainder of the lump sum death benefits shall be paid to the member's estate; or, if applicable, to the member's heirs if no estate is probated.

ITEM 4. Amend rule 495—14.4(97B) as follows:

495—14.4(97B) Applications for death benefits. Before death benefit payments can be made, application in writing must be submitted to IPERS with a copy of the member's death certificate, together with information establishing the claimant's right to payment. A named beneficiary must complete an IPERS application for death benefits based on the deceased member's account. If the claimant's claim is based on dissolution of marriage that revoked the IPERS beneficiary designation, the claim must be processed pursuant to rule 14.16(97B).

ITEM 5. Adopt the following new rule 495—14.16(97B):

495—14.16(97B) Beneficiary revocation pursuant to Iowa Code section 598.20B, dissolution of marriage. IPERS is not liable for the payment of death benefits to a beneficiary pursuant to a beneficiary designation that has been revoked or reinstated by a divorce, annulment, or remarriage before IPERS receives the written notice set forth in subrule 14.16(1). Furthermore, IPERS shall only be liable for payments made after receipt of such written notice if the written notice is received at least ten calendar days prior to the payment.

14.16(1) Form of notice. The written notice shall include the following information:

- a. The name of the deceased member,
- b. The name of the person(s) whose entitlement to IPERS death benefits is being challenged,
- c. The name, address, and telephone number of the person(s) asserting an interest,
- d. A statement that the decedent's divorce, annulment, or remarriage revoked the entitlement of the person(s) whose status is being challenged to the IPERS death benefits in question, and
- e. A copy of the divorce decree upon which the claim is based.

In addition to the above information, if the person whose entitlement is being challenged is not the former spouse, the written notice must indicate that the person was related to the former spouse, but not the member, by blood, adoption or affinity, and state the nature of the relationship.

14.16(2) Deliver of notice. Written notice under this rule must be addressed to IPERS General Counsel and mailed to IPERS by registered mail or served upon IPERS in the same manner as a summons in a civil action.

14.16(3) Administration. Upon receipt of written notice that meets the requirements of subrules 14.16(1) and 14.16(2):

- a. IPERS shall review the deceased member's account and determine if there are moneys left to be distributed from the account.
- b. IPERS shall pay the amounts owed, if any, to the probate court having jurisdiction over the decedent's estate, if the deceased member has an open estate.
- c. IPERS shall pay the amounts owed, if any, to the probate court that had or would have had jurisdiction over the decedent's estate, if the deceased member's estate is closed or an estate was not opened.
- d. As IPERS makes applicable payments, a copy of the written notice received by IPERS shall be filed with the probate court.

If the probate court charges a filing fee for the deposit of amounts payable hereunder, IPERS shall deduct such filing fees and other court costs from the amounts payable prior to transfer. The probate court shall hold the funds and, upon its determination, shall order disbursement or transfer in accordance with the

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determination. Additional filing fees and court costs, if any, shall be charged upon disbursement either to the recipient or against the funds on deposit with the probate court, in the discretion of the court.

14.16(4) Release of claims. Payments made to a probate court under this rule shall discharge IPERS from all claims by all persons for the value of amounts paid the court.

ITEM 6. Amend paragraph **16.2(2)“c”** as follows:

c. Permitted provisions. A qualified domestic relations order may also:

(1) to (3) No change.

(4) Allow benefits to be paid to an alternate payee based on a period of reemployment for a retired member; and

(4) (5) Name a successor alternate payee to receive the amounts that would have been payable to the member's spouse or former spouse under the order, if the alternate payee dies before the member. The designation of a successor alternate payee in an order shall be void and be given no effect if IPERS does not receive confirmation of the successor's name, social security number, and last-known mailing address in a cover letter or in a copy of the court's confidential information form; and. A QDRO that lists a series of default successor alternate payees by class or permits a successor alternate payee to designate additional successor alternate payees is not permitted and will be rejected. Once a QDRO is qualified and accepted by IPERS for administration, in order to change the designation of successor alternate payees, an amended order is required.

~~(5) Allow benefits to be paid to an alternate payee based on a period of reemployment for a retired member.~~

ARC 6868B

PHARMACY BOARD[657]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 3, "Pharmacy Technicians," Iowa Administrative Code.

The proposed amendments add, delete, or modify various definitions relating to national certification of pharmacy technicians, recognize certification from either of two certification entities if that certification is attained and maintained prior to July 1, 2010, and establish requirements for accreditation of national certification entities that will be accepted beginning July 1, 2010.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

These amendments were approved at the June 3, 2008, regular meeting of the Board of Pharmacy.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on July 22, 2008. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These proposed amendments were also Adopted and Filed Emergency and are published herein as **ARC 6867B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 155A.33 and Iowa Code Supplement sections 155A.6A and 155A.39.

ARC 6872B

PHARMACY BOARD[657]**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendment was approved at the June 3, 2008, regular meeting of the Board of Pharmacy.

The proposed amendment authorizes a hospital to make available to prescribers while they practice in the hospital generic prescription blanks or forms that may identify the hospital pharmacy.

Requests for waiver or variance of the discretionary provisions of this rule will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on July 22, 2008. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

This amendment is intended to implement Iowa Code sections 147.55 and 155A.12.

The following amendment is proposed.

Amend subrule 8.11(5) as follows:

8.11(5) *Freedom of choice/solicitation/kickbacks/fee-splitting and imprinted prescription blanks or forms.* A pharmacist or pharmacy shall not enter into any agreement which negates a patient's freedom of choice of pharmacy services. A pharmacist or pharmacy shall not participate in prohibited agreements with any person in exchange for recommending, promoting, accepting, or promising to accept the professional pharmaceutical services of any pharmacist or pharmacy. "Person" includes an individual, corporation, partnership, association, firm, or other entity. "Prohibited agreements" includes an agreement or arrangement that provides premiums, "kickbacks," fee-splitting, or special charges as compensation or inducement for placement of business or solicitation of patronage with any pharmacist or pharmacy. "Kickbacks" includes, but is not limited to, the provision of medication carts, facsimile machines, any other equipment, or preprinted forms or supplies for the exclusive use of a facility or practitioner at no charge or billed below reasonable market rate. A pharmacist shall not provide, cause to be provided, or offer to provide to any person authorized to prescribe prescription blanks or forms bearing the pharmacist's or pharmacy's name, address, or other means of identification, except that a hospital may make available to hospital staff prescribers, emergency department prescribers, and prescribers granted hospital privileges for the prescribers' use during practice at or in the hospital generic prescription blanks or forms bearing the name, address, or telephone number of the hospital pharmacy.

ARC 6874B

PHARMACY BOARD[657]**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 13, "Sterile Compounding Practices," Iowa Administrative Code.

The proposed amendments clarify the purpose and scope of the rules contained within Chapter 13 and add, delete, and modify definitions of terms used throughout the Chapter. Item 3 amends rule 13.11(155A) to specifically address defined conditions and examples of low-risk preparations and adds new subrule 13.11(3) relating to a new subset of low-risk preparations that are further identified as low-risk preparations with 12-hour or less beyond-use date. The new subrule identifies the conditions and criteria that classify a preparation within this category including the required equipment, area, personnel, and environmental processes. Standards for solid-frozen state are amended in subrules 13.11(1), 13.12(1), and 13.13(1) to comply with current industry standard temperatures for this state and conditions defining high-risk preparations are amended for clarity.

Rule 13.14(155A) is amended in Item 7 to clarify the provisions relating to immediate-use preparations, including the identification of circumstances that would qualify a preparation under this category and the detailing of processes relating to the compounding of immediate-use preparations. Requirements regarding the use of single-dose and multiple-dose vials are clarified in rule 13.15(155A).

The preferred placement of a biological safety cabinet or a compounding aseptic isolator containment and control device to be used in the sterile preparation of hazardous drugs is clarified in Item 9, and terms relating to sterilization methods are corrected and further clarified in Item 10.

Amendments proposed in Item 11 are intended to clarify the purpose for media-fill testing by personnel and provide guidance for the development of appropriate testing procedures. Redundant terms are deleted in Item 12, and Item 13 amends the requirements for periodic microbial air sampling to require semiannual sampling regardless of the level of sterile compounding engaged in at the compounding site. Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

The amendments were approved at the June 3, 2008, regular meeting of the Board of Pharmacy.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on July 22, 2008. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 124.301, 126.10, 155A.2, 155A.4, 155A.13, 155A.13A, and 155A.28.

The following amendments are proposed.

ITEM 1. Amend rule 657—13.1(124,126,155A), introductory paragraph, as follows:

657—13.1(124,126,155A) Purpose and scope. These rules establish standards and procedures for the preparation, labeling, and distribution of sterile preparations by licensed pharmacies pursuant to a physician's practitioner's order or prescription; for sterile product quality and characteristics; for personnel training, environmental quality, and equipment standards; and for pharmaceutical care. Sterile compounding differs from nonsterile compounding primarily by requiring the maintenance of sterility when preparations are compounded exclusively with sterile ingredients and components and by requiring the achievement of

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sterility when preparations are compounded with nonsterile ingredients and components. The standards and procedures outlined in this chapter apply to pharmacy practice when a preparation:

ITEM 2. Amend rule 657—13.2(124,126,155A) as follows:

657—13.2(124,126,155A) Definitions. For the purposes of this chapter, the following definitions shall apply:

“Anteroom” or *“ante area”* means an ISO Class 8 or superior area where personnel perform hand hygiene and garbing procedures, staging of components, order entry, preparation labeling, and other high-particulate generating activities.

“Aseptic processing” means a method of preparing pharmaceutical and medical products that involves the separate sterilization of the product and of the package, the transfer of the product into the container, and closure of the container under at least ISO Class 5 conditions and using procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by microorganisms during processing.

“Beyond-use date” means the date or time following compounding after which the preparation shall not be stored, or transported, or administered. The beyond-use date is determined from the date or time compounding of the preparation is completed.

“Biological safety cabinet, Class II” or *“BSC”* means a ventilated cabinet having an open front with inward airflow for personnel protection, downward HEPA-filtered laminar airflow for product protection, and HEPA-filtered exhausted air for environmental protection.

“Buffer area” or *“cleanroom”* means a room or area where the primary engineering control device is physically located and in which the concentration of airborne particles is controlled to meet an ISO Class 7 standard a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear is not exceeded for a specified cleanliness class. Activities that occur in the buffer area include the preparation and staging of components and supplies used when sterile preparations are compounded.

“Compounding” means the constitution, reconstitution, combination, dilution, or other process causing a change in the form, composition, or strength of any ingredient or of any other attribute of a product.

“Compounding aseptic isolator” or *“CAI”* means a form of barrier isolator specifically designed for compounding pharmaceutical ingredients or preparations. A CAI is designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer processes. Air exchange into the isolator from the surrounding environment should not occur unless ~~it~~ the air has first passed through a microbially retentive filter, HEPA minimum.

“Critical site” means a location that includes any component or fluid pathway surfaces or openings, such as vial septa, injection ports, beakers, opened ampoules, and needle hubs, exposed and at risk of direct contact with air, moisture, or touch contamination.

“Critical surface” ~~means any area that provides an opportunity for exposure to contamination during aseptic processing, including sterilized products, devices, components, and containers used in the preparation, packaging and transferring of compounded sterile preparations.~~

“Hazardous drug” means a pharmaceutical that is antineoplastic, carcinogenic, mutagenic, or teratogenic.

“HEPA” means high efficiency particulate air.

“High-risk preparation” means a sterile preparation that is compounded from nonsterile ingredients; that is compounded with nonsterile components, containers, or equipment and requires terminal sterilization; or that meets the conditions of rule 13.13(155A).

“ISO Class 5” or *“Class 100 condition”* means an atmospheric environment that contains less than 100 particles, 0.5 microns or larger in diameter per cubic foot of air, according to ISO standards.

“ISO Class 7” or *“Class 10,000 condition”* means an atmospheric environment that contains less than 10,000 particles, 0.5 microns or larger in diameter per cubic foot of air, according to ISO standards.

“ISO Class 8” or *“Class 100,000 condition”* means an atmospheric environment that contains less than 100,000 particles, 0.5 microns or larger in diameter per cubic foot of air, according to ISO standards.

“Laminar airflow workbench” or *“LAFW”* means an apparatus designed to provide an ISO Class 5 environment for the preparation of sterile products that uses air circulation in a defined direction that passes through a HEPA filter to remove the initial particles and the particles generated within the controlled environment.

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“Low-risk preparation” means a sterile preparation that is compounded with sterile equipment, sterile ingredients, and sterile contact surfaces or that meets the conditions of rule 13.11(155A).

“Media-fill test” or *“MFT”* means a test used to validate aseptic technique of compounding personnel or of processes and to ensure that the processes used are able to produce sterile product without microbial contamination.

~~“MFT” means a media fill test as specified in rule 13.25(155A).~~

“Medium-risk preparation” means a sterile preparation that is compounded with sterile equipment, sterile ingredients, and sterile contact surfaces and involves complex or numerous manipulations of a sterile product or that meets the conditions of rule 13.12(155A).

“Multiple-dose container” means a multiple-unit container for articles or preparations intended for parenteral administration only and usually containing antimicrobial preservatives.

“Negative pressure room” means a room that is at a lower pressure compared to adjacent spaces, creating a net airflow into the room.

“Positive pressure room” means a room that is at a higher pressure compared to adjacent spaces, creating a net airflow out of the room.

“Preparation” or *“compounded sterile preparation”* means a sterile drug or nutrient that is ~~prepared~~ compounded in a licensed pharmacy or other health care-related facility pursuant to the order of a licensed prescriber, which preparation may or may not ~~be~~ contain sterile products.

“Primary engineering control device” means a device or room that provides an ISO Class 5 environment during the compounding process. Such devices include, but may not be limited to, laminar airflow workbenches (LAFWs), biological safety cabinets (BSCs), and compounding aseptic isolators (CAIs).

“Product” means a commercially manufactured sterile drug or nutrient that has been evaluated for safety and efficacy by the FDA.

“Segregated compounding area” means a designated space, either a demarcated area or room, which is restricted to preparing low-risk preparations with 12-hour or less beyond-use date. A segregated compounding area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for the compounding of sterile preparations and shall be void of activities and materials that are extraneous to sterile compounding.

“Single-dose container” means a single-unit container for articles or preparations intended for parenteral administration only, intended for a single use and labeled as such. Examples include prefilled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when labeled for a single use or single dose.

“Sterile compounding” means the aseptic processing in a clean air environment of any pharmaceutical ~~including, but not limited to, the following preparations that are required to be sterile when they are administered to patients: baths and soaks for live organs and tissues, into patient body cavities, central nervous and vascular systems, eyes, and joints, and when used as baths for live organs and tissues, including by not limited to~~ injections (e.g., colloidal dispersions, emulsions, solutions, and suspensions), aqueous bronchial and nasal inhalations, irrigations for wounds and body cavities, ophthalmic drops and ointments, and tissue implants.

ITEM 3. Amend rule 657—13.11(155A) as follows:

657—13.11(155A) Low-risk preparations and low-risk preparations with 12-hour or less beyond-use date.

13.11(1) Conditions defined—low-risk preparations. Preparations compounded under all of the following conditions are at a low risk of contamination.

a. The preparations are compounded with aseptic manipulations entirely within ISO Class 5 or superior air quality using only sterile ingredients, products, components, and devices.

b. The compounding involves only transferring, measuring, and mixing ~~no~~ not more than three commercially manufactured packages of sterile products and not more than two entries into any one container (e.g., bag, vial) of sterile product or administration container or device to make the preparation.

c. Manipulations are limited to aseptically opening ampoules, penetrating sterile stoppers on vials with sterile needles and syringes, and transferring sterile liquids in sterile syringes to sterile administration devices, containers of other sterile products, and containers for storage and dispensing.

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d. In the absence of the preparation's passing a sterility test and provided that the preparation is properly stored before administration, storage periods shall not exceed the following:

- (1) At controlled room temperature for 48 hours;
- (2) At a cold temperature for 14 days; or
- (3) In a solid-frozen state ~~at~~ between minus 20 25 and minus 10 degrees Celsius ~~or colder~~ for 45 days.

13.11(2) Examples—low-risk preparations. Examples of low-risk compounding include:

a. The single-volume transfer of sterile dosage forms from ampoules, bottles, bags, and vials using sterile syringes with sterile needles, other administration devices, and other sterile containers. When ampoules are employed, solution content shall be passed through a sterile filter to remove any particles.

b. The manual measuring and mixing of no more than three manufactured products including an infusion or diluent solution to compound drug admixtures and nutritional solutions.

13.11(3) Low-risk preparations with 12-hour or less beyond-use date. If the primary engineering control device is a CAI and does not meet the requirements described in subrule 13.27(3) or is a BSC or LAFW that cannot be located within an ISO Class 7 buffer area, then only low-risk level nonhazardous and radiopharmaceutical preparations compounded pursuant to a prescriber's order for a specific patient may be prepared, and administration of such preparations shall commence within 12 hours of compounding or as recommended in the manufacturers' package insert, whichever is less. Preparations shall meet all four of the following criteria:

a. The primary engineering control device shall be certified and shall maintain ISO Class 5 for exposure of critical sites and shall be in a segregated compounding area restricted to sterile compounding activities that minimize the risk of preparation contamination.

b. The segregated compounding area shall not be in a location that has unsealed windows or doors that connect to the outdoors or high traffic flow, or that is adjacent to construction sites, warehouses, food preparation areas, or other areas presenting a risk of contamination.

c. Personnel shall be appropriately garbed and shall perform appropriate cleansing activities prior to compounding. Sinks should be separated from the immediate area of the ISO Class 5 primary engineering control device.

d. Appropriate procedures for cleaning and disinfecting the sterile compounding areas, for personnel training and competency evaluation, for aseptic practices and cleaning or disinfecting processes, and for environmental air sampling and testing shall be followed.

ITEM 4. Amend paragraph **13.12(1)“d”** as follows:

d. In the absence of the preparation's passing a sterility test and provided that the preparation is properly stored before administration, storage periods shall not exceed the following:

- (1) At controlled room temperature for 30 hours;
- (2) At a cold temperature for 9 days; or
- (3) In a solid-frozen state ~~at~~ between minus 20 25 and minus 10 degrees Celsius ~~or colder~~ for 45 days.

ITEM 5. Amend paragraphs **13.13(1)“c”** and **13.13(1)“e”** as follows:

c. Nonsterile procedures such as weighing and mixing in air quality inferior to ISO Class 7 are performed before sterilization, compounding personnel are not properly garbed and gloved, or nonsterile water-containing preparations are stored for more than six hours.

e. For a sterilized high-risk preparation, in the absence of the preparation's passing a sterility test, the storage periods shall not exceed the following:

- (1) At controlled room temperature for 24 hours;
- (2) At a cold temperature for 3 days; or
- (3) In a solid-frozen state ~~at~~ between minus 20 25 and minus 10 degrees Celsius ~~or colder~~ for 45 days.

ITEM 6. Amend rule 657—13.14(155A) as follows:

657—13.14(155A) Immediate-use preparations. For the purpose of The immediate-use provisions of this rule are intended only for those situations where there is a need for emergency or immediate patient care, pharmacies are exempted from requirements described in this chapter for low- and medium-risk preparations administration of a sterile preparation. Such situations may include cardiopulmonary resuscitation,

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emergency room treatment, preparation of diagnostic agents, or critical therapy where the compounding of the preparation under low-risk level conditions would subject the patient to additional risk due to delays in therapy. Immediate-use preparations are not intended for storage for anticipated needs or for batch compounding. Medium-risk and high-risk preparations shall not be compounded as immediate-use preparations. Immediate-use preparations are exempt from the provisions of rule 13.11(155A) for low-risk preparations only when all of the following criteria are met:

1. Only The compounding process involves simple aseptic measuring and transfer manipulations are performed with of not more than three commercially manufactured packages of sterile commercial drug nonhazardous products including an infusion or diluent solution or diagnostic radiopharmaceutical products from the manufacturers' original containers and not more than two entries into any one container or package of sterile infusion solution or administration container or device. Hazardous drugs shall not be compounded as immediate-use preparations.

2. Unless required for the preparation, the compounding procedure occurs continuously without delays or interruptions and does is a continuous process not to exceed one hour.

3. At no point during preparation are critical surfaces and ingredients of the preparation directly exposed to contact contamination, such as human touch, cosmetic flakes or particulates, blood, human body substances (e.g., nasal and oral excretions and secretions), and nonsterile inanimate sources. During compounding, aseptic technique is followed and, if the preparation is not immediately administered, the preparation is under continuous supervision to minimize the potential for contact with nonsterile surfaces, introduction of particulate matter or biological fluids, mix-ups with other sterile preparations, and direct contact with outside surfaces.

4. Administration begins not later than two hours after compounding of the preparation has begun.

5. If administration has not begun within two hours after compounding of the preparation has begun, the preparation is promptly and safely discarded. ~~Immediate-use preparations shall not be stored for later use.~~

6. Unless immediately and completely administered by the person who compounded the preparation or unless immediate and complete administration is witnessed by the person who compounded the preparation, the preparation shall bear a label listing patient identification information, the names and amounts of all ingredients, the name or initials of the person who compounded the preparation, and the exact one-hour beyond-use date and time.

ITEM 7. Amend rule 657—13.15(155A) as follows:

657—13.15(155A) Utilization of single-dose and multiple-dose containers. Pharmacies utilizing single-dose and multiple-dose containers in sterile compounding shall comply with the following:

1. Single-dose containers that are opened or needle-punctured shall be used within one hour if opened in air quality conditions inferior to ISO Class 5. Any remaining contents shall be discarded.

2. Single-dose vials that are continuously exposed to ISO Class 5 or cleaner air shall be used within six hours after initial needle puncture.

3. Opened single-dose ampoules shall not be stored for any period of time under any air quality conditions.

4. Multiple-dose containers with antimicrobial preservatives that are entered or opened shall be used within 28 days of initial entry or opening unless otherwise specified by the manufacturer.

5. Multiple-dose and single-dose sterile products shall not be combined for use as multiple-dose applications.

ITEM 8. Amend paragraph 13.20(3)“a” as follows:

a. It is preferable for the ISO Class 5 BSC or CAI to be placed in a contained environment, physically separated from other preparation areas, where air pressure is negative and where the ISO Class 5 BSC or CAI is appropriately vented to the outside of the building.

ITEM 9. Amend paragraph 13.24(2)“a,” introductory paragraph, as follows:

a. Sterilization by filtration. This method of sterilization involves the passage of a fluid or solution through a sterilizing grade membrane to produce a sterile effluent.

PHARMACY BOARD[657](cont'd)

ITEM 10. Amend paragraph **13.24(2)“b,”** introductory paragraph, as follows:

b. ~~Thermal~~ Terminal sterilization. Use of saturated steam under pressure, or autoclaving, is the preferred method to terminally sterilize aqueous preparations.

ITEM 11. Amend rule 657—13.25(155A), introductory paragraph, as follows:

657—13.25(155A) Media-fill testing by personnel. The pharmacy shall develop, maintain, and implement written procedures that include appropriate media-fill testing by personnel authorized to compound preparations. The issues to consider in the development of a media-fill test are media-fill procedures, media selection, fill volume, incubation, time and temperature, inspection of filled units, documentation, interpretation of results, and possible corrective actions required. Tests shall be performed without interruption in an ISO Class 5 environment under conditions that closely simulate the stressful conditions encountered during compounding of the specific risk level preparations for which the test is intended. The pharmacy shall maintain records of media-fill testing performed, and results of testing procedures shall be available to the board or agents of the board. Compounding personnel whose media-fill test vials result in gross microbial colonization shall be immediately reinstructed and reevaluated by expert compounding personnel to ensure correction of all aseptic practice deficiencies.

ITEM 12. Amend subrule 13.27(2) as follows:

13.27(2) Placement of primary engineering control device. The primary engineering control device shall be placed in a ~~cleanroom or~~ buffer area where HEPA filters are employed and the air quality is maintained at ISO Class 7. This area shall have cleanable, nonshedding, smooth surfaces; all junctures shall be coved; and all cracks and crevices shall be caulked. The ceiling shall be impervious and hydrophobic. The buffer area shall not contain any drains or sinks. Only the furniture, equipment, supplies and other material required for compounding activities to be performed shall be brought into the room. Such items brought into the room shall be cleaned and disinfected. Placement in buffer areas ~~and cleanrooms~~ of objects and devices not essential to the compounding process is dictated by the measured effect of those objects and devices on the required environmental quality of air atmospheres and surfaces.

ITEM 13. Amend paragraph **13.29(2)“a”** as follows:

a. Air sampling. Microbial sampling of air within the primary engineering control devices, buffer areas, and anterooms is required ~~on a monthly basis for pharmacies engaging in low- and medium-risk compounding and weekly for pharmacies engaging in high-risk compounding~~ at least semiannually as part of the recertification of facilities and equipment. If compounding occurs in multiple locations within an institution, environmental sampling is required for each individual compounding area.

ARC 6870B

PHARMACY BOARD[657]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 18, “Centralized Prescription Filling and Processing,” Iowa Administrative Code.

The amendments were approved at the June 3, 2008, regular meeting of the Board of Pharmacy.

The proposed amendments define “mail order pharmacy” and require that a pharmacist providing central fill or central processing functions as an employee of a licensed pharmacy located in Iowa must be licensed to practice pharmacy in Iowa. The amendments also exempt a central fill pharmacy from the requirement to return a central fill prescription to the originating pharmacy for delivery to the patient if the central fill

PHARMACY BOARD[657](cont'd)

pharmacy is a mail order pharmacy and provide that a central fill or central processing pharmacy sharing a common central processing unit with an originating pharmacy may perform drug use review, subject to specific requirements of subrule 18.3(3), paragraph “b.”

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 6869B**.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on July 22, 2008. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 155A.13 and 155A.13A.

ARC 6897B**PUBLIC SAFETY DEPARTMENT[661]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner hereby gives Notice of Intended Action to amend Chapter 16, “State Building Code—Factory Built Structures,” and to adopt new Chapter 322, “State Building Code—Manufactured Housing Support and Anchorage Systems,” Iowa Administrative Code.

Responsibility for establishing standards for the installation of manufactured housing in Iowa is assigned by Iowa Code section 103A.7 to the Building Code Commissioner, who is charged with establishing such standards as part of the State Building Code, with the approval of the Building Code Advisory Council. Standards for support and anchoring systems are a critical element of the installation requirements. The rules proposed herein implement requirements for support and anchoring systems and some closely related requirements. Changes have been incorporated to conform with new federal requirements adopted by the U.S. Department of Housing and Urban Development, and the rules are located in a new chapter as part of a general renumbering of the rules of the Department of Public Safety. In addition, rules 661—16.622(103A), 661—16.625(103A), and 661—16.626(103A) are being rescinded because they will be superseded by proposed new 661—Chapters 322 and 374.

A public hearing on these proposed amendments will be held on August 12, 2008, at 10 a.m. in the First Floor Public Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Persons may present their views concerning these amendments at the public hearing either orally or in writing. Persons who wish to make oral presentations at the hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319; by telephone at (515)725-6185; or by electronic mail to admrule@dps.state.ia.us at least one day prior to the hearing.

Any interested persons may make oral or written comments concerning these proposed amendments to the Agency Rules Administrator by mail, telephone, or in person at the above address by 4:30 p.m. on August 11, 2008. Comments may also be submitted by electronic mail to admrule@dps.state.ia.us by 4:30 p.m. on August 11, 2008.

These amendments were also Adopted and Filed Emergency, effective July 1, 2008, and are published herein as **ARC 6898B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 103A.9.

ARC 6916B

PUBLIC SAFETY DEPARTMENT[661]**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 17A.3, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 25, "Public Records and Fair Information Practices," Iowa Administrative Code.

Iowa Code chapter 22 establishes the basic framework for access to records of public agencies in Iowa. 661—Chapter 25 was adopted in 1988 to facilitate implementation of these requirements by the Department of Public Safety. Other chapters of the administrative rules of the Department also relate to the release of records, including Chapter 11 (criminal history records), Chapter 81 (criminal intelligence files), Chapter 83 (sex offender registry records) and Chapter 89 (missing persons records). Last year, Chapter 25 was amended to be consistent with the "Peace Officer Bill of Rights," which was enacted as 2007 Iowa Acts, chapter 160, and is now codified as Iowa Code Supplement section 80F.1. Because of uncertainty about the scope of applicability of that then-new Code language, a new provision having to do with the release of photographs of employees of the Department was written broadly. It now appears clear that the law is applicable only to certain employees of the Department, so the rule regarding release of photographs is being revised accordingly. In addition, the rule which provides directions about how to obtain information about records maintained by the Department is being updated.

A public hearing on these proposed amendments will be held on August 12, 2008, at 8 a.m. in the First Floor Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. The building and conference room are fully accessible. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, by mail, by telephone at (515)725-6185, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on August 11, 2008, or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office at least one day prior to the public hearing.

These amendments are intended to implement Iowa Code chapter 22 and Supplement chapter 80F.

The following amendments are proposed.

ITEM 1. Amend rule 661—25.11(17A,22) as follows:

661—25.11(17A,22) Records ~~management~~ retention manual. The department's "Records ~~Management~~ Retention Manual" contains the records management information ~~requested~~ required by Iowa Code chapter 22. The manual is available for examination and copying at the ~~Administrative Services Division Public Information Bureau, Department of Public Safety, Wallace State Office Building~~ 215 East 7th Street, Des Moines, Iowa 50319, and at district offices.

ITEM 2. Amend rule 661—25.15(22,82GA,SF457) as follows:

661—25.15(22,82GA,SF457 80F) Release of official photographs of employees.

25.15(1) An official photograph of ~~any~~ an employee of the department who is an officer as defined in Iowa Code Supplement section 80F.1 shall be released only if one of the following is true:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

~~1. a.~~ The employee has signed a written release giving permission to release, the photograph, or

~~2. b.~~ A request has been received to release the photograph pursuant to Iowa Code chapter 22.

25.15(2) A photograph of ~~an~~ any employee of the department shall not be released if its release could jeopardize an ongoing investigation or place the employee at risk.

ARC 6894B

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 100B.10, the State Fire Marshal hereby gives Notice of Intended Action to amend Chapter 251, "Fire Fighter Training and Certification," Iowa Administrative Code.

The Fire Service Training Bureau administers a certification program for fire fighters in Iowa. The certification process maintained by the Fire Service Training Bureau is accredited by the International Fire Service Accreditation Congress (IFSAC). While certification is not a state requirement to work as a career or volunteer fire fighter in Iowa, some fire departments do require such certification for employment or for continued employment.

Certification is based upon satisfactory completion of training and testing which is in turn based upon standards published by the National Fire Protection Association. These nationally recognized standards are periodically updated, and adoption of the new editions of the published standards is required for continued accreditation of the certification program by IFSAC. The amendment proposed here updates to current editions of the relevant standards the standards for certification in various areas.

A public hearing on this proposed amendment will be held on August 12, 2008, at 8:30 a.m. in the First Floor Public Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, by mail, by telephone at (515)725-6185, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding this proposed amendment may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on August 11, 2008. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone by 4:30 p.m. on August 11, 2008.

This amendment is intended to implement Iowa Code section 100B.6.

The following amendment is proposed.

Amend rule 661—251.202(100B) as follows:

661—251.202(100B) Certification standards. Standards for Iowa fire fighter certification are based upon nationally recognized standards established by the National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101. Certification at each level in the Iowa fire service certification system results in national certification as well.

251.202(1) Fire fighter.

a. Fire fighter I. Certification as a fire fighter I is based upon the requirements for fire fighter I certification established in NFPA 1001, "Standard for Fire Fighter Professional Qualifications," ~~2002~~ 2008 edition, chapter 5.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

b. Fire fighter II. Certification as a fire fighter II is based upon the requirements for fire fighter II certification established in NFPA 1001, "Standard for Fire Fighter Professional Qualifications," ~~2002~~ 2008 edition, chapter 6.

251.202(2) Driver/operator.

a. Driver/operator (pumper). Certification as a driver/operator (pumper) is based upon the requirements for fire department vehicle driver/operator (pumper) certification established in NFPA 1002, "Standard ~~for~~ on Fire Vehicle Apparatus Driver/Operator Professional Qualifications," ~~2002~~ 2003 edition, chapter 5.

b. Driver/operator (aerial). Certification as a driver/operator (aerial) is based upon the requirements for fire department vehicle driver/operator (aerial) certification established in NFPA 1002, "Standard ~~for~~ on Fire Vehicle Apparatus Driver/Operator Professional Qualifications," ~~2002~~ 2003 edition, chapter 6.

251.202(3) to 251.202(5) No change.**251.202(6) Fire service instructor.**

a. Fire service instructor I. Certification as a fire service instructor I is based upon the requirements for certification as a fire service instructor I established in NFPA 1041, "Standard for Fire Service Instructor Professional Qualifications," ~~2002~~ 2007 edition, chapter 4.

b. Fire service instructor II. Certification as a fire service instructor II is based upon the requirements for certification as a fire service instructor II established in NFPA 1041, "Standard for Fire Service Instructor Professional Qualifications," ~~2002~~ 2007 edition, chapter 5.

251.202(7) Responder to hazardous materials incidents.

a. Responder to hazardous materials incidents (awareness). Certification as a responder to hazardous materials incidents (awareness) is based upon the requirements for certification as a responder to hazardous materials incidents (awareness) established in NFPA 472, "Standard for Professional Competence of Responders to Hazardous Materials Incidents/Weapons of Mass Destruction Incidents," ~~2002~~ 2008 edition, chapter 4.

b. Responder to hazardous materials incidents (operations). Certification as a responder to hazardous materials incidents (operations) is based upon the requirements for certification as a responder to hazardous materials incidents (operations) established in NFPA 472, "Standard for Professional Competence of Responders to Hazardous Materials Incidents/Weapons of Mass Destruction Incidents," ~~2002~~ 2008 edition, chapter 5.

ARC 6883B**PUBLIC SAFETY DEPARTMENT[661]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner hereby gives Notice of Intended Action to amend Chapter 300, "State Building Code—Administration," and Chapter 303, "State Building Code—Requirements for Energy Conservation in Construction," Iowa Administrative Code, with the approval of the Building Code Advisory Council.

The Building Code Commissioner is charged by Iowa Code sections 103A.8 and 103A.8A and Iowa Code Supplement section 103A.10 with adopting requirements for energy conservation in construction. Several significant changes in applicability of these requirements were enacted this year by the Iowa General Assembly in 2008 Iowa Acts, Senate File 517. Previously, energy conservation requirements applied only to new construction. These requirements will apply to all construction projects except for renovation or remodeling of one and two dwelling unit residential buildings. Changes to implement this revision are included in the amendments proposed herein. Additionally, several clarifying editorial changes are incorporated.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

A public hearing on these proposed amendments will be held on August 12, 2008, at 10:30 a.m. in the First Floor Public Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa. Persons may present their views concerning these amendments at the public hearing either orally or in writing. Persons who wish to make oral presentations at the hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; by telephone at (515)725-6185; or by electronic mail to admrule@dps.state.ia.us at least one day prior to the hearing.

Any interested persons may make oral or written comments concerning these proposed amendments to the Agency Rules Administrator by mail, telephone, or in person at the above address by 4:30 p.m. on August 11, 2008. Comments may also be submitted by electronic mail to admrule@dps.state.ia.us by 4:30 p.m. on August 11, 2008.

These amendments were also Adopted and Filed Emergency, effective June 15, 2008, and are published herein as **ARC 6885B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code sections 103A.8 and 103A.8A and Iowa Code Supplement section 103A.10 as amended by 2008 Iowa Acts, Senate File 517.

ARC 6880B

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 103A.56, the Building Code Commissioner hereby gives Notice of Intended Action to adopt new Chapter 374, "Manufactured Housing Installer Certification," Iowa Administrative Code.

Iowa Code chapter 103A, Division IV, assigns responsibility to the Building Code Commissioner for regulation of the installation of manufactured and mobile homes in Iowa. Provisions regarding the standards to be met in the installation of manufactured and mobile homes are adopted as part of the State Building Code, which establishes construction standards. The Building Code Commissioner is also authorized to establish licensing requirements for manufactured home dealers and certification requirements for manufactured housing installers. While rules for this program have been in place since 2000, they are required to be updated to comply with new requirements established by the U.S. Department of Housing and Urban Development. The current rules, which are rescinded in **ARC 6898B** herein, initially had been adopted as part of the State Building Code, but since these rules are not construction standards, the Building Code Commissioner has determined that they more appropriately should be adopted separately from the State Building Code and should be placed in a separate chapter of the administrative rules. This new chapter will contain solely the rules for certification of manufactured housing installers.

A public hearing on these proposed rules will be held on August 12, 2008, at 9 a.m. in the First Floor Public Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Persons may present their views concerning these rules at the public hearing either orally or in writing. Persons who wish to make oral presentations at the hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319; by telephone at (515)725-6185; or by electronic mail to admrule@dps.state.ia.us at least one day prior to the hearing.

Any interested persons may make oral or written comments concerning these proposed rules to the Agency Rules Administrator by mail, telephone, or in person at the above address by 4:30 p.m. on August 11, 2008. Comments may also be submitted by electronic mail to admrule@dps.state.ia.us.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

These rules were also Adopted and Filed Emergency, effective July 1, 2008, and are published herein as **ARC 6881B**. The content of that submission is incorporated by reference.

These rules are intended to implement Iowa Code section 103A.59.

ARC 6921B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 455A.6, the Environmental Protection Commission amends Chapter 1, "Operation of Environmental Protection Commission," Iowa Administrative Code.

The amendment modifies the voting requirements for the Commission. Under the amendment, for official action by the Commission the requisite number of Commissioners varies depending on the number of Commissioners currently appointed by the Governor. The amendment provides that four votes are sufficient to take action when there are only seven appointed members.

From late November 2007 until very recently, the Commission has had only seven appointed members from a statutory total of nine members. Because of the number of votes required to take action, these two vacancies have resulted in delayed Agency action, gridlock, and stalemate, with the minority at times deciding an issue. The Commission wishes to adopt an amendment to provide that four votes are sufficient to take action when there are only seven appointed members. This amendment is authorized by Iowa Code section 455A.6(5), which allows the Commission to determine by rule the number of votes required to take action when a quorum is present.

Due to the possibility that the loss of a Commissioner may cause this problem to recur, the Commission wishes to proceed with this amendment on an expedited basis. Pursuant to Iowa Code section 17A.4(2), the Environmental Protection Commission finds for good cause that notice and public participation would be unnecessary, impracticable, or contrary to the public interest.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment should be waived and this amendment should be effective upon filing with the Administrative Rules Coordinator, as it confers a benefit on a segment of the public. The public is benefited when the Commission can expeditiously take action on matters brought before it as opposed to inaction or delayed action due to voting which results in a stalemate.

This amendment is also published herein under Notice of Intended Action as **ARC 6922B** to allow public comment.

This amendment is intended to implement Iowa Code section 455A.6.

This amendment became effective June 13, 2008.

The following amendment is adopted.

Amend rule 567—1.6(17A,455A) as follows:

567—1.6(17A,455A) Quorum and voting requirements.

1.6(1) Quorum. ~~A majority of the members of the commission~~ Five or more commissioners present at a meeting constitutes a quorum.

1.6(2) Voting.

a. Voting requirements if eight or nine commissioners are currently appointed. ~~The concurrence of a majority of the members of the commission is required to determine any matter before the commission for action, except for a vote to close a meeting which requires the concurrence of two thirds of the members of the commission, or the concurrence of all members present if less than two thirds are present. If eight or nine commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of five or more commissioners shall be required to act on any matter within the jurisdiction of the commission.~~

b. Voting requirements if seven or fewer commissioners are currently appointed. If seven or fewer commissioners are currently appointed to the environmental protection commission by the governor, then the affirmative votes of four or more commissioners shall be required to act on any matter within the jurisdiction of the commission.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

c. *Voting requirements to close a meeting.* Notwithstanding paragraph 1.6(2)“a” or 1.6(2)“b,” a vote to close a meeting shall require the concurrence of six or more members of the commission, or the concurrence of all members present if less than six members are present.

[Filed Emergency 6/13/08, effective 6/13/08]

[Published 7/2/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6878B

HUMAN SERVICES DEPARTMENT[441]**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code Supplement section 29C.20A, the Department of Human Services amends Chapter 58, “Emergency Assistance,” Iowa Administrative Code.

These amendments update rules for the Iowa disaster aid individual assistance grant program to conform to the following changes made in 2008 Iowa Acts, House File 2564:

- The income limit for eligibility is raised from 130 percent of the federal poverty guidelines to 200 percent of the federal poverty guidelines (currently \$2,334 per month for a family of two).
- The limit on program benefits is changed to the specific amount of \$5,000, instead of the formula of 25 percent of 130 percent of the federal poverty level for a household of one, which changes annually when new poverty levels are released (currently about \$3,380).

These amendments do not provide for waivers in specified situations since these amounts are specified in statute and the Department has no authority to waive statutory provisions. The Council on Human Services adopted these amendments June 11, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because the legislation allows no deviation and impracticable because the legislation became effective before notice and public participation could be achieved.

The Department finds that these amendments confer a benefit by enabling more people to qualify for disaster aid individual grants. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code Supplement section 29C.20A as amended by 2008 Iowa Acts, House File 2564.

These amendments became effective July 1, 2008.

The following amendments are adopted.

ITEM 1. Amend subrule 58.4(3), introductory paragraph, as follows:

58.4(3) The household’s self-declared annual income is at or less than 130 200 percent of the federal poverty level for a household of that size.

ITEM 2. Amend rule 441—58.5(29C), introductory paragraph, as follows:

441—58.5(29C) Eligible categories of assistance. The maximum assistance available to a household in a single disaster is ~~25 percent of the annual income limit for a household of one person~~ \$5,000. Reimbursement is available under the program for the following disaster-related expenses:

[Filed Emergency 6/11/08, effective 7/1/08]

[Published 7/2/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6879B

HUMAN SERVICES DEPARTMENT[441]**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments publish the Department's annual updates of the statewide average cost of nursing facility services to a private-pay resident and the statewide average charges or maximum Medicaid rate for various levels of institutional care.

The statewide average cost of nursing facility services to a private-pay resident is determined by a survey of nursing facilities, including freestanding facilities, hospital-based skilled nursing facilities, and facilities serving special populations. This monthly average cost has increased from \$4,173.92 to \$4,342.03 (\$142.83 per day). This amount is used to determine the period of ineligibility for Medicaid payment of nursing facility care and other long-term care services that is required when a person has transferred assets for less than market value to obtain Medicaid eligibility. The amount transferred is divided by this monthly average cost to determine the number of months of ineligibility. Since the cost has gone up, the resulting periods of ineligibility will be slightly shorter.

Iowa Code chapter 633C requires the Department to determine annually and publish the statewide average charges or maximum Medicaid rate for various levels of institutional care. These amounts are used to regulate the disposition of funds in a medical assistance income (Miller-type) trust. A medical assistance income trust allows a person whose income is above the Medicaid income limit for long-term care (currently \$1,911 per month) but is less than the cost of care in a medical institution to attain eligibility by depositing the income in a trust. An increase in the average charge allows more people to qualify for Medicaid using this method.

Changes in the average charge or maximum figures are as follows:

- Nursing facility care: an increase to \$3,923 per month (previously \$3,737). This figure is based on data from freestanding facilities only, since the cost of special care is considered separately.
- ICF/MR care: an increase to \$17,954 per month (previously \$15,124).
- Mental health institute care: a decrease to \$16,363 per month (previously \$16,451).
- Care in a psychiatric medical institution for children: an increase to \$4,975 per month (previously \$4,725).

These amendments do not provide for waivers in specified situations since the basis for the figures is set by statute.

The Council on Human Services adopted these amendments on June 11, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because the Department has no discretion in setting these amounts.

The Department finds that these amendments confer a benefit on the public by carrying out the Department's statutory responsibility to make the specific amounts for the thresholds referenced in the statute available to the public. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 249A.4 and Iowa Code chapter 633C.

These amendments became effective July 1, 2008.

The following amendments are adopted.

ITEM 1. Amend subrule 75.23(3) as follows:

75.23(3) *Period of ineligibility.* The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in 75.23(2), divided by the statewide average private-pay rate for nursing facility services at the time of application. The department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July 1, 2007 2008, through June 30, 2008 2009, this average statewide cost shall be ~~\$4,173.92~~ \$4,342.03 per month or ~~\$137.30~~ \$142.83 per day.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend paragraph **75.24(3)“b”** as follows:

b. A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual.

For disposition of trust amounts pursuant to Iowa Code sections 633.707 to 633.711, the average statewide charges and Medicaid rates for the period from July 1, ~~2007~~ 2008, to June 30, ~~2008~~ 2009, shall be as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is ~~\$3,737~~ \$3,923 per month.

(2) and (3) Rescinded IAB 7/7/04, effective 7/1/04.

(4) The maximum statewide Medicaid rate for a resident of an intermediate care facility for the mentally retarded is ~~\$15,124~~ \$17,954 per month.

(5) The average statewide charge to a resident of a mental health institute is ~~\$16,451~~ \$16,363 per month.

(6) The average statewide charge to a private-pay resident of a psychiatric medical institution for children is ~~\$4,725~~ \$4,975 per month.

(7) The average statewide charge to a home- and community-based waiver applicant or recipient shall be consistent with the level of care determination and correspond with the average charges and rates set forth in this paragraph.

[Filed Emergency 6/11/08, effective 7/1/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6884B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

This amendment provides for “continuous eligibility” for children under the age of 19 who are eligible for Medicaid under the Family Medical Assistance Program (FMAP), the Child Medical Assistance Program (CMAP), or the Mothers and Children (MAC) Program, as directed by 2008 Iowa Acts, House File 2539, section 3. Once the child is determined eligible for Medicaid under one of these coverage groups, the child’s eligibility will continue for up to 12 months without regard to changes in family income or household composition that might make the household ineligible for Medicaid. Eligibility may end before 12 months have elapsed due to the annual eligibility review or because the child reaches the age of 19.

This strategy is intended to promote continuity of health care coverage for children. Studies show that children with gaps in health care coverage have less access to services than do those with continuous coverage.

This amendment does not provide for waivers in specified situations because continued coverage is a benefit to the children affected. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment June 11, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because 2008 Iowa Acts, House File 2539, section 3, requires the Department to make this change.

The Department finds that this amendment confers a benefit by supporting continuity of health care coverage for children. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

This amendment is also published herein under Notice of Intended Action as **ARC 6886B** to allow for public comment.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment is intended to implement Iowa Code Supplement section 249A.3 as amended by 2008 Iowa Acts, House File 2539.

This amendment became effective July 1, 2008.

The following amendment is adopted.

Adopt the following **new** subrule 75.54(4):

75.54(4) *Continuous eligibility for children.*

a. A child under the age of 19 who is determined eligible for ongoing Medicaid under subrule 75.1(14), 75.1(15), or 75.1(28) shall retain that eligibility regardless of changes in family income or household composition until the earliest of the following dates:

(1) Twelve months after the month when the department received the household's latest application or review form;

(2) The month of the household's annual eligibility review; or

(3) The month when the child reaches age 19.

b. Children entering an existing Medicaid household shall be assigned the same annual eligibility review date as that established for the household.

[Filed Emergency 6/11/08, effective 7/1/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6889B

HUMAN SERVICES DEPARTMENT[441]**Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 92, "IowaCare," Iowa Administrative Code.

These amendments change the Medicaid reimbursement methodology for outpatient hospital services. Iowa Medicaid has been reimbursing for outpatient hospital services based on a combination of prospectively set payments through a combination of a cost-based payment methodology based upon ambulatory patient groups (APGs) and Medicaid-determined fee schedules for noninpatient programs, ambulance services, observation beds, and clinical diagnostic laboratory services. The hospital-specific base rates and Iowa-specific APG weights are updated (rebased) every three years and are inflated during nonrebased years as approved by the Iowa General Assembly. The last rebasing was effective October 1, 2005.

Provisions of 2008 Iowa Acts, Senate File 2425, section 32, authorize the Department to implement the Medicare ambulatory payment classification methodology for reimbursement of outpatient hospital services and provide that any change in hospital reimbursement shall be budget-neutral. Under these amendments, hospital outpatient services will be paid based on a combination of:

- Medicaid-determined fee schedules; and
- Medicare's outpatient prospective payment system (OPPS), as mandated for Medicare by the Balanced Budget Refinement Act of 1999 and the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000.

The Medicaid payment for hospital outpatient services paid based on the OPPS will be made at a predetermined, specific rate. These outpatient services are classified according to a list of ambulatory payment classifications (APCs). Each ambulatory payment classification is an outpatient service or group of services for which a single rate is set. The services or groups of services are determined according to the typical clinical characteristics, the resource use, and the costs associated with the service or services. The relative weight assigned to the APC measures the resource requirements of the service.

The Centers for Medicare and Medicaid Services publish relative weights for ambulatory payment classifications annually in the Code of Federal Regulations. These amendments adopt and incorporate by

HUMAN SERVICES DEPARTMENT[441](cont'd)

reference the OPPS APCs and relative weights effective January 1, 2008, published as final regulations on November 27, 2007, in the Federal Register at Volume 72, No. 227, page 66579.

Each service represented by a current procedural terminology (CPT) or healthcare common procedures coding system (HCPCS) code is assigned an OPPS APC payment status indicator that indicates whether a service is payable under an OPPS APC or another payment system and also whether particular OPPS policies apply to the code. Services that do not have an assigned weight will be paid based on the Iowa Medicaid fee schedule.

The APC payment is calculated by multiplying the assigned APC relative weight by the blended base APC rate. The blended base APC rate reflects a 50/50 blend of statewide and hospital-specific base APC rates. The statewide and hospital-specific base APC rates are calculated using the hospitals' base-year cost reports and arithmetical hospital-specific and statewide case-mix indices that measure the relative average costliness of outpatient cases treated in a hospital compared to the statewide average cost. To limit aggregate expenditures to available funding, a budget factor is applied when the statewide and hospital-specific base APC rates are calculated.

Outpatient hospital services that have been assigned to an APC with an assigned weight will be reimbursed based on the APC to which the services provided are assigned. A discount factor is usually applied to additional APCs when more than one APC is provided during the same visit (including the same APC provided more than once). However, not all APCs are subject to a discount factor. For procedures started but discontinued before completion, the payment will be 50 percent of the APC for those services. A cost outlier payment is made for services provided during a single visit that have an extraordinarily high cost and is considered an additional payment beyond the base APC payment.

Some services or groups of services that are assigned an APC are "packaged" with other services. Packaged services are services that are secondary to other services but considered an integral part of another service. Generally, separate payment is not made for packaged services. However, there are limited instances where separate payment under the OPPS APC payment criteria will be made for packaged services.

OPPS APC relative weights will be updated annually in January. Effective January 1, 2009, and every three years thereafter, base APC rates and case-mix indices will be updated. During years when no update is made, inflation will be applied only to the extent the Iowa General Assembly provides funding.

These amendments change the interim payment methodology for outpatient services provided by critical access hospitals to payment based on the hospital's cost-to-charge ratio. The final payment rate is still determined by the retrospective adjustment to 100 percent of allowable cost. Noninpatient programs, ambulance services, and clinical diagnostic laboratory services will continue to be paid based on the Medicaid-determined fee schedule.

These amendments do not provide for waivers in specified situations. A hospital may request a waiver under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on March 12, 2008, as **ARC 6629B**. The Department received one comment on the Notice of Intended Action, asking that the Department clarify the application of these amendments to critical access hospitals. In response to this comment, the Department has made the following changes to the amendments as published under Notice of Intended Action:

- Amended paragraph 79.1(1)"g" to remove references to the basis for prospective payments for critical access hospitals and to replace language about how those payments are adjusted with cross references to the specific rules on reimbursement of inpatient and outpatient services.

- Removed proposed references to APC payment in paragraph 79.1(5)"aa."

- Removed the last sentence from the proposed introductory paragraph of 79.1(16)"b."

- Inserted new paragraph 79.1(16)"h" to explain reimbursement for outpatient services in a critical access hospital and relettered proposed paragraph "h" as paragraph "i." Interim payments to critical access hospitals for outpatient services are based on the hospital's outpatient Medicaid cost-to-charge ratio. These payments are adjusted retroactively based on the reasonable cost of services, which is determined based on the hospital's cost report and Medicare cost principles.

- Added a reference to new paragraph 79.1(16)"h" in subparagraph 79.1(16)"c"(2) to clarify that critical access hospitals are excluded.

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- Struck subparagraph 79.1(16)“j”(5).
- Amended paragraph 79.1(16)“o” to clarify that critical access hospitals are excluded.

Other changes to the Notice of Intended Action are as follows:

• Subrule 78.3(5) and paragraphs 78.31(2)“h” and 79.1(8)“d” are amended to remove references to APG payments and to reference “Medicaid members” instead of “Medicaid recipients.” Subrule 78.3(5) is also updated to correct cross references for drug coverage.

• Subparagraph 92.8(3)“a”(2) is amended to define IowaCare covered services for pregnant women without referring to APG coding.

The Council on Human Services adopted these amendments on June 11, 2008.

The Department finds that these amendments confer a benefit on hospitals by streamlining billing procedures. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments became effective on July 1, 2008.

The following amendments are adopted.

ITEM 1. Amend subrule 78.3(5) as follows:

78.3(5) Payment will be approved for drugs provided inpatients subject to the same provisions specified in ~~78.1(2)“a”(2) and (3)~~ 78.2(1) and 78.2(4)“b”(1) to (10) except for 78.2(4)“b”(7). The basis of payment for drugs administered to inpatients is through the DRG reimbursement.

a. Payment will be approved for drugs and supplies provided outpatients subject to the same provisions specified in ~~78.1(2)~~ 78.2(1) through 78.2(4) except for 78.2(4)“b”(7). The basis of payment for drugs provided outpatients is through ~~the APG reimbursement~~ a combination of Medicaid-determined fee schedules and ambulatory payment classification, pursuant to 441—subrule 79.1(16).

b. Hospitals ~~which that~~ wish to administer vaccines which are available through the vaccines for children program to Medicaid ~~children members~~ shall enroll in the vaccines for children program. In lieu of payment, vaccines available through the vaccines for children program shall be accessed from the department of public health for Medicaid ~~recipients members~~.

ITEM 2. Amend paragraph **78.31(2)“h”** as follows:

h. Hospital outpatient programs ~~which that~~ wish to administer vaccines which are available through the vaccines for children program to Medicaid ~~recipients members~~ shall enroll in the vaccines for children program. In lieu of payment, vaccines available through the vaccines for children program shall be accessed from the department of public health for Medicaid ~~recipients members~~. Hospital outpatient programs receive payment via the ~~APG~~ APC reimbursement for the administration of vaccines to Medicaid ~~recipients members~~.

ITEM 3. Amend paragraph **79.1(1)“g”** as follows:

g. *Retrospectively adjusted prospective rates.* Critical access ~~hospital providers~~ hospitals are reimbursed prospectively ~~on a DRG basis for inpatient care and an APG basis for outpatient care, pursuant to subrule 79.1(5),~~ with retrospective adjustments based on annual cost reports submitted by the hospital at the end of the hospital’s fiscal year. The retroactive adjustment equals the difference between the reasonable costs of providing covered services to eligible fee-for-service Medicaid ~~recipients members~~ (excluding ~~recipients members~~ in managed care), determined in accordance with Medicare cost principles, and the Medicaid ~~fee-for-service~~ reimbursement received ~~on the DRG and APG basis.~~ Amounts paid ~~prior to adjustment~~ that exceed reasonable costs shall be recovered by the department. ~~The base rate upon which the DRG and APG payment is built shall be changed after any retrospective adjustment to reflect, as accurately as is possible, the reasonable costs of providing covered services to eligible fee-for-service Medicaid recipients for the coming year using the most recent utilization as submitted to the Iowa Medicaid enterprise provider cost audits and rate-setting unit and Medicare cost principles. See paragraphs 79.1(5)“aa” and 79.1(16)“h.”~~

Once a hospital begins receiving reimbursement as a critical access hospital, prospective DRG and APG payments are not subject to the inflation factors, rebasing, or recalibration as provided in 441—paragraph 79.1(5)“k” and 441—paragraph 79.1(16)“j.”

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ITEM 4. Amend paragraph **79.1(5)“aa”** as follows:

aa. Retrospective adjustment for critical access hospitals. Payments to critical access hospitals pursuant to paragraphs 79.1(5) “a” to “z” are subject to a retrospective adjustment equal to the difference between the reasonable costs of covered services provided to eligible fee-for-service Medicaid ~~recipients~~ members (excluding ~~recipients~~ members in managed care), based on the hospital’s annual cost reports and Medicare cost principles, and the Medicaid fee-for-service reimbursement received pursuant to paragraphs 79.1(5) “a” to “z.” Amounts paid ~~prior to~~ before adjustment that exceed reasonable costs shall be recovered by the department.

(1) The base rate upon which the DRG ~~and APG~~ payment is built shall be changed after any retrospective adjustment to reflect, as accurately as is possible, the reasonable costs of providing the covered service to eligible fee-for-service Medicaid ~~recipients~~ members for the coming year using the most recent utilization as submitted to the Iowa Medicaid enterprise provider cost ~~audits~~ audit and rate-setting unit and Medicare cost principles.

(2) Once a hospital begins receiving reimbursement as a critical access hospital, the prospective DRG and APG payments are base rate is not subject to inflation factors, rebasing, or recalibration as provided in paragraph 79.1(5) “k.”

ITEM 5. Amend paragraph **79.1(8)“d”** as follows:

d. All hospitals ~~which that~~ wish to administer vaccines which are available through the vaccines for children program to Medicaid ~~recipients~~ members shall enroll in the vaccines for children program. In lieu of payment, vaccines available through the vaccines for children program shall be accessed from the department of public health for Medicaid ~~recipients~~ members. Hospitals receive reimbursement for the administration of vaccines to Medicaid ~~recipients~~ members through the DRG reimbursement for inpatients and ~~APG~~ APC reimbursement for outpatients.

ITEM 6. Amend paragraph **79.1(16)“a”** as follows:

a. Definitions.

“Allowable costs” means the costs defined as allowable in 42 CFR, Chapter IV, Part 413, as amended to October 1, 2007, except for the purposes of calculating direct medical education costs, where only the reported costs of the interns and residents are allowed. Further, costs are allowable only to the extent that they relate to patient care; are reasonable, ordinary, and necessary; and are not in excess of what a prudent and cost-conscious buyer would pay for the given service or item.

“Ambulatory patient group (APG)” shall mean a group of similar outpatient procedures, encounters or ancillary services which are combined based on patient clinical characteristics and expected resource use. Data used to define APGs include ICD-9-CM diagnoses codes and CPT-4 procedure codes.

“Ambulatory payment classification” or “APC” means an outpatient service or group of services for which a single rate is set. The services or groups of services are determined according to the typical clinical characteristics, the resource use, and the costs associated with the service or services.

“Ambulatory payment classification relative weight” or “APC relative weight” means the relative value assigned to each APC.

“Ancillary service” means a supplemental service that supports the diagnosis or treatment of the patient’s condition. Examples include diagnostic testing or screening services and rehabilitative services such as physical or occupational therapy.

“Ancillary services” shall mean those tests and procedures ordered by a physician to assist in patient diagnosis or treatment. Ancillary procedures, such as immunizations, increase the time and resources expended during a visit, but do not dominate the visit.

“APC service” means a service that is priced and paid using the APC system.

“APG relative weight” shall mean a number that reflects the expected resource consumption for cases associated with each APG, relative to the average APG. That is, the Iowa-specific weight for a certain APG reflects the relative charge for treating all singleton cases classified in that particular APG, compared to the average charge for treating all Medicaid APGs in Iowa hospitals.

“Assessment payment” shall mean an additional payment made to a hospital for only the initial assessment and determination of medical necessity of a patient for the purpose of determining if the ER is the most

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appropriate treatment site. This payment shall be equal to 50 percent of the customary reimbursement rate for CPT 4 code 99281 (Evaluation and Management of a Patient in the Emergency Room) as of December 31, 1994.

"Base-year cost report," for rates effective ~~October~~ July 1, 2005 2008, shall mean the hospital's cost report with fiscal year end on or after January 1, ~~2004 2006~~, and before January 1, ~~2005 2007~~, ~~except as noted in paragraph "s."~~ Cost reports shall be reviewed using Medicare's cost-reporting and cost reimbursement principles for those cost-reporting periods.

"Blended base ~~amount~~ APC rate" shall mean the ~~case-mix-adjusted~~, hospital-specific operating cost per visit associated with treating Medicaid outpatients base APC rate, plus the statewide average ~~case-mix-adjusted operating cost per Medicaid visit~~ base APC rate, divided by two. This ~~basic amount~~ is the value to which inflation is added to form a final payment rate. The costs of hospitals receiving reimbursement as critical access hospitals during any of the period of time included in the base-year cost report shall not be used in determining the statewide average ~~case-mix-adjusted operating cost per Medicaid visit~~ base APC rate.

"Case-mix adjusted" shall mean the division of the hospital-specific base amount or other applicable components of the final payment rate by the hospital-specific case-mix index.

"Case-mix index" shall mean an arithmetical index measuring the relative average costliness of outpatient cases treated in a hospital, compared to the statewide average.

"Consolidation" shall mean the process by which the APG classification system determines whether separate payment is appropriate when a patient is assigned multiple significant procedure APGs. All significant procedures within a single APG are suppressed (or grouped) for payment purposes, into one APG. Multiple, related significant procedures in different APGs are consolidated into the highest weighted APG for reimbursement purposes. Multiple, unrelated significant procedures in different APGs are not consolidated; thus, each receives separate payment.

"Cost outlier" shall mean ~~cases which~~ services provided during a single visit that have an extraordinarily high cost as established in paragraph "g" and, ~~thus~~, are therefore eligible for additional payments above and beyond the base ~~APG~~ APC payment.

"Current procedural terminology—fourth edition (CPT-4)" is the systematic listing and coding of procedures and services provided by physicians or other related health care providers. The CPT-4 coding is maintained by the American Medical Association and is updated yearly.

"Diagnostic service" means an examination or procedure performed to obtain information regarding the medical condition of an outpatient.

"Direct medical education costs" shall mean costs directly associated with the medical education of interns and residents or other medical education programs, such as a nursing education program or allied health programs, conducted in an outpatient setting, that qualify for payment as medical education costs under the Medicare program. The amount of direct medical education costs is determined from the hospital base-year cost reports and is inflated in determining the direct medical education rate.

"Direct medical education rate" shall mean a rate calculated for a hospital reporting medical education costs on the Medicare cost report (CMS 2552). The rate is calculated using the following formula: Direct medical education costs are multiplied by the percentage of valid claims to total claims, further multiplied by inflation factors, then divided by outpatient visits.

"Discount factor" means the percentage discount applied to additional APCs when more than one APC is provided during the same visit (including the same APC provided more than once). Not all APCs are subject to a discount factor.

"Discounting" shall mean a reduction in standard payment when related procedures or ancillary services are performed during a single visit. Discount rates are defined in paragraph "h."

"Final payment rate" shall mean the blended base amount that forms the final dollar value used to calculate each provider's reimbursement amount, when multiplied by the APG weight. These dollar values are displayed on the rate table listing.

"Graduate medical education and disproportionate share fund" shall mean a reimbursement fund developed as an adjunct reimbursement methodology to directly reimburse qualifying hospitals for the

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direct costs of interns and residents associated with the operation of graduate medical education programs for outpatient services.

~~“Grouper” shall mean the Iowa-specific Version 2.0 Grouper software developed by Minnesota Mining and Manufacturing (3M) for the Centers for Medicare and Medicaid Services, with modifications for payable APGs made to support Medicaid program policy in Iowa. (See paragraph “i.”)~~

“Healthcare common procedures coding system” or “HCPCS” means the national uniform coding method that is maintained by the Centers for Medicare and Medicaid Services (CMS) and that incorporates the American Medical Association publication Physicians Current Procedural Terminology (CPT) and the three HCPCS unique coding levels I, II, and III.

“Hospital-based clinic” means a clinic that is owned by the hospital, operated by the hospital under its hospital license, and on the premises of the hospital.

~~“Inlier” shall mean those cases where the cost of treatment falls within the established cost boundaries of APG payment.~~

“International classifications of diseases—fourth edition, ninth revision (ICD-9)” is a systematic method used to classify and provide standardization to coding practices which are used to describe the diagnosis, symptom, complaint, condition or cause of a person’s injury or illness.

~~“Invalid claims or visits” shall mean claims or visits that are not priced and paid using the ambulatory patient group (APG) system.~~

“Modifier” means a two-character code that is added to the procedure code to indicate the type of service performed. The modifier allows the reporting hospital to indicate that a performed service or procedure has been altered by some specific circumstance. The modifier may affect payment or may be used for information only.

“Multiple significant procedure discounting” means a reduction of the standard payment amount for an APC to recognize that the marginal cost of providing a second APC service to a patient during a single visit is less than the cost of providing that service by itself.

~~“Net number of Iowa Medicaid valid visits” shall mean total visits plus the incremental portion of visits that resulted in outliers less invalid visits.~~

“Observation services” means a set of clinically appropriate services, such as ongoing short-term treatment, assessment, and reassessment, that is provided before a decision can be made regarding whether a patient needs further treatment as a hospital inpatient or is able to be discharged from the hospital.

“Outpatient hospital services” means preventive, diagnostic, therapeutic, observation, rehabilitation, or palliative services provided to an outpatient by or under the direction of a physician, dentist, or other practitioner by an institution that:

1. Is licensed or formally approved as a hospital by the officially designated authority in the state where the institution is located; and
2. Meets the requirements for participation in Medicare as a hospital.

“Outpatient prospective payment system” or “OPPS” means the payment methodology for hospital outpatient services established by this subrule and based on Medicare’s outpatient prospective payment system mandated by the Balanced Budget Refinement Act of 1999 and the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000.

~~“Outpatient visit” shall mean those hospital-based outpatient services which are billed on a single UB-92 claim form, and which occur within 72 hours of initiation of service, with exceptions as noted in paragraph “m.”~~

“Packaged service” means a service that is secondary to other services but is considered an integral part of another service.

~~“Packaging” shall mean the inclusion of routinely performed ancillary services in the reimbursement of an APG. In the APG classification system, there are many routine, low-cost ancillary procedures or tests, such as routine urinalysis which are customarily ordered and performed during a visit. When this ancillary service is packaged, this indicates that the relative APG weight has been set to reflect the inclusion of the costs of the related ancillary procedures. The packaged APGs are 310 (plain film), 332 (simple pathology), 343 (simple immunology), 345 (simple microbiology), 347 (simple endocrinology), 350 (basic chemistry), 349 (simple chemistry), 351 (multichannel chemistry), 359 (urinalysis), 356 (simple clotting), 358 (simple hematology),~~

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~~360 (blood and urine dipstick), 371 (simple pulmonary function tests), 373 (cardiogram), 383 (introduction of needles and catheter), 384 (dressings and other minor procedures), 385 (other ancillary procedures), and 321 (anesthesia).~~

“Pass-through” means certain drugs, devices, and biologicals for which providers are entitled to payment separate from any APC.

“Quality improvement organization” or “QIO” shall mean the organization that performs medical peer review of Medicaid claims, including review of validity of hospital diagnosis and procedure coding information; completeness, adequacy and quality of care; and appropriateness of prospective payments for outlier cases and nonemergent use of the emergency room. These activities undertaken by the QIO may be included in a contractual relationship with the Iowa Medicaid enterprise.

~~“Rate table listing” shall mean a schedule of rate payments maintained by the department for each provider. The rate table listing is defined as the output that shows the final payment rate by hospital before being multiplied by the appropriate APG weight.~~

~~“Rebasing” shall mean the redetermination of the blended base amount or other applicable components of the final payment rate from APC rate using more recent Medicaid cost report data.~~

~~“Recalibration” shall mean the adjustment of all APG weights to reflect changes in relative resource consumption.~~

“Significant procedure APG” shall mean a the procedure which, therapy, or service provided to a patient that constitutes the primary reason for the visit and which dominates the time and resources expended during the visit.

~~“Singleton APG” shall mean those APGs on a patient claim which, following consolidation of significant procedures and packaging of ancillaries, are part of a visit with no remaining multiple significant procedures. These singletons, as well as medical and ancillary visits, are used to calculate relative weights in the procedure described in paragraph “d.”~~

~~“Statewide visit expected payment (SVEP)” shall mean the expected payment for an outpatient visit, for use in defining cost outliers. This payment equals the sum of the statewide average case mix adjusted operating cost per Medicaid visit multiplied by the relative weight for each valid APG within a visit (following packaging and discounting), which includes the applicable fee schedule amounts.~~

“Status indicator” or “SI” means a payment indicator that identifies whether a service represented by a CPT or HCPCS code is payable under the OPPS APC or another payment system. Only one status indicator is assigned to each CPT or HCPCS code.

~~“Valid claims or visits” shall mean those claims or visits that are priced and paid using the ambulatory patient group (APG) system.~~

ITEM 7. Rescind paragraphs **79.1(16)“b”** to **79.1(16)“e”** and adopt the following new paragraphs in lieu thereof:

b. Outpatient hospital services. Medicaid adopts the Medicare categories of hospitals and services subject to and excluded from the hospital outpatient prospective payment system (OPPS) at 42 CFR 419.20 through 419.22 as amended to October 1, 2007, except as indicated in this subrule.

(1) A teaching hospital that has approval from the Centers for Medicare and Medicaid Services to receive reasonable cost reimbursement for physician services under 42 CFR 415.160 through 415.162 as amended to October 1, 2007, is eligible for combined billing status if the hospital has filed the approval notice with the Iowa Medicaid enterprise provider cost audit and rate-setting unit. If a teaching hospital elects to receive reasonable cost payment for physician direct medical and surgical services furnished to Medicaid members, those services and the supervision of interns and residents furnishing the care to members are covered as hospital services and are combined with the bill for hospital service. Cost settlement for the reasonable costs related to physician direct medical and surgical services shall be made after receipt of the hospital’s financial and statistical report.

(2) A hospital-based ambulance service must be an enrolled Medicaid ambulance provider and must bill separately for ambulance services. EXCEPTION: If the member’s condition results in an inpatient admission to the hospital, the reimbursement for ambulance services is included in the hospital’s DRG reimbursement rate for the inpatient services.

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(3) All psychiatric services for members who have a primary diagnosis of mental illness and are enrolled in the Iowa Plan program under 441—Chapter 88 shall be the responsibility of the Iowa Plan contractor and shall not be otherwise payable by Iowa Medicaid. The only exceptions to this policy are reference laboratory and radiology services, which will be payable by fee schedule or APC.

(4) Emergency psychiatric evaluations for members who are covered by the Iowa Plan shall be the responsibility of the Iowa Plan contractor. For members who are not covered by the Iowa Plan, services shall be payable under the APC for emergency psychiatric evaluation.

(5) Substance abuse services for persons enrolled in the Iowa Plan program under 441—Chapter 88 shall be the responsibility of the Iowa Plan contractor and shall not be otherwise payable by Iowa Medicaid. The only exceptions to this policy are reference laboratory and radiology services, which will be payable by fee schedule or APC.

c. Payment for outpatient hospital services.

(1) Outpatient hospital services shall be reimbursed according to the first of the following methodologies that applies to the service:

1. Any specific rate or methodology established by rule for the particular service.
2. The OPPS APC rates established pursuant to this subrule.
3. Fee schedule rates established pursuant to paragraph 79.1(1) “c.”

(2) Except as provided in paragraph 79.1(16) “h,” outpatient hospital services that have been assigned to an APC with an assigned weight shall be reimbursed based on the APC to which the services provided are assigned. For dates of services beginning on or after July 1, 2008, the department adopts and incorporates by reference the OPPS APCs and relative weights effective January 1, 2008, published on November 27, 2007, as final by the Centers for Medicare and Medicaid Services in the Federal Register at Volume 72, No. 227, page 66579. Relative weights shall be updated pursuant to paragraph 79.1(16) “j.”

(3) The APC payment is calculated as follows:

1. The applicable APC relative weight is multiplied by the blended base APC rate determined according to paragraph 79.1(16) “e.”
2. The resulting APC payment is multiplied by a discount factor of 50 percent and by units of service when applicable.
3. For a procedure started but discontinued before completion, the department will pay 50 percent of the APC for the service.

(4) The OPPS APC payment status indicators show whether a service represented by a CPT or HCPCS code is payable under an OPPS APC or under another payment system and whether particular OPPS policies apply to the code. The following table lists the status indicators and definitions for both services that are paid under an OPPS APC and services that are not paid under an OPPS APC.

Indicator	Item, Code, or Service	OPPS Payment Status
A	<p>Services furnished to a hospital outpatient that are paid by Medicare under a fee schedule or payment system other than OPPS, such as:</p> <ul style="list-style-type: none"> • Ambulance services. • Clinical diagnostic laboratory services. • Diagnostic mammography. • Screening mammography. • Nonimplantable prosthetic and orthotic devices. • Physical, occupational, and speech therapy. • Erythropoietin for end-stage renal dialysis (ESRD) patients • Routine dialysis services provided for ESRD patients in a certified dialysis unit of a hospital. 	<p>If covered by Iowa Medicaid as an outpatient hospital service, the service is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1) “c.”</p> <p>If not covered by Iowa Medicaid as an outpatient hospital service, the service is not paid under OPPS APC, but may be paid under the specific rate or methodology established by other rules (other than outpatient hospital).</p>
B	Codes that are not paid by Medicare on an outpatient hospital basis	<p>Not paid under OPPS APC.</p> <ul style="list-style-type: none"> • May be paid when submitted on a bill type other than outpatient hospital.

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		<ul style="list-style-type: none"> An alternate code that is payable when submitted on an outpatient hospital bill type (13x) may be available.
C	Inpatient procedures	<p>If covered by Iowa Medicaid as an outpatient hospital service, the service is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1) "c."</p> <p>If not covered by Iowa Medicaid as an outpatient hospital service, the service is not paid under OPPS APC. Admit the patient and bill as inpatient care.</p>
D	Discontinued codes	Not paid under OPPS APC or any other Medicaid payment system.
E	<p>Items, codes, and services:</p> <ul style="list-style-type: none"> That are not covered by Medicare based on statutory exclusion and may or may not be covered by Iowa Medicaid; or That are not covered by Medicare for reasons other than statutory exclusion and may or may not be covered by Iowa Medicaid; or That are not recognized by Medicare but for which an alternate code for the same item or service may be available under Iowa Medicaid; or For which separate payment is not provided by Medicare but may be provided by Iowa Medicaid. 	<p>If covered by Iowa Medicaid, the item, code, or service is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1) "c."</p> <p>If not covered by Iowa Medicaid, the item, code, or service is not paid under OPPS APC or any other Medicaid payment system.</p>
F	<p>Certified registered nurse anesthetist services</p> <p>Corneal tissue acquisition</p> <p>Hepatitis B vaccines</p>	<p>If covered by Iowa Medicaid, the item or service is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1) "c."</p> <p>If not covered by Iowa Medicaid, the item or service is not paid under OPPS APC or any other Medicaid payment system.</p>
G	Pass-through drugs and biologicals	<p>If covered by Iowa Medicaid, the item is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1) "c."</p> <p>If not covered by Iowa Medicaid, the item is not paid under OPPS APC or any other Medicaid payment system.</p>

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H	Pass-through device categories	<p>If covered by Iowa Medicaid, the device is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1)“c.”</p> <p>If not covered by Iowa Medicaid, the device is not paid under OPPS APC or any other Medicaid payment system.</p>
K	<p>Blood and blood products</p> <p>Brachytherapy sources</p> <p>Non-pass-through drugs and biologicals</p> <p>Therapeutic radiopharmaceuticals</p>	<p>If covered by Iowa Medicaid, the item is:</p> <ul style="list-style-type: none"> • Paid under OPPS APC with a separate APC payment when both an APC and an APC weight are established. • Paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1)“c” when either no APC or APC weight is established. <p>If not covered by Iowa Medicaid, the item is not paid under OPPS APC or any other Medicaid payment system.</p>
L	<p>Influenza vaccine</p> <p>Pneumococcal pneumonia vaccine</p>	<p>If covered by Iowa Medicaid, the vaccine is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1)“c.”</p> <p>If not covered by Iowa Medicaid, the vaccine is not paid under OPPS APC or any other Medicaid payment system.</p>
M	Items and services not billable to the Medicare fiscal intermediary	<p>If covered by Iowa Medicaid, the item or service is not paid under OPPS APC, but is paid based on the Iowa Medicaid fee schedule for outpatient hospital services established pursuant to 79.1(1)“c.”</p> <p>If not covered by Iowa Medicaid, the item or service is not paid under OPPS APC or any other Medicaid payment system.</p>
N	Packaged services not subject to separate payment under Medicare OPPS payment criteria	Paid under OPPS APC. Payment, including outliers, is included with payment for other services; therefore, no separate payment is made.
P	Partial hospitalization	Not a covered service under Iowa Medicaid.
Q	Packaged services subject to separate payment under Medicare OPPS payment criteria	<p>Paid under OPPS APC in a separate APC payment based on Medicare OPPS payment criteria.</p> <p>If criteria are not met, payment, including outliers, is packaged into payment for other services; therefore, no separate APC payment is made.</p>
S	Significant procedure, not discounted when multiple	<p>If covered by Iowa Medicaid, the procedure is paid under OPPS APC with separate APC payment.</p> <p>If not covered by Iowa Medicaid, the procedure is not paid under OPPS APC or any other Medicaid payment system.</p>

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T	Significant procedure, multiple reduction applies	If covered by Iowa Medicaid, the procedure is paid under OPPS APC with separate APC payment subject to multiple reduction. If not covered by Iowa Medicaid, the procedure is not paid under OPPS APC or any other Medicaid payment system.
V	Clinic or emergency department visit	If covered by Iowa Medicaid, the service is paid under OPPS APC with separate APC payment. If not covered by Iowa Medicaid, the service is not paid under OPPS APC or any other Medicaid payment system.
X	Ancillary services	If covered by Iowa Medicaid, the service is paid under OPPS APC with separate APC payment. If not covered by Iowa Medicaid, the service is not paid under OPPS APC or any other Medicaid payment system.

d. Calculation of case-mix indices. Hospital-specific and statewide case-mix indices shall be calculated using all applicable claims with dates of service occurring in the period July 1, 2006, through June 30, 2007, paid through September 10, 2007.

(1) Hospital-specific case-mix indices are calculated by summing the relative weights for each APC service at that hospital and dividing the total by the number of APC services for that hospital.

(2) The statewide case-mix index is calculated by summing the relative weights for each APC service for all claims and dividing the total by the statewide total number of APC services. Claims for hospitals receiving reimbursement as critical access hospitals during any of the period included in the base-year cost report are not used in calculating the statewide case-mix index.

e. Calculation of the hospital-specific base APC rates.

(1) Using the hospital's base-year cost report, hospital-specific outpatient cost-to-charge ratios are calculated for each ancillary and outpatient cost center of the Medicare cost report, Form CMS 2552-96.

(2) The cost-to-charge ratios are applied to each line item charge reported on claims with dates of service occurring in the period July 1, 2006, through June 30, 2007, paid through September 10, 2007, to calculate the Medicaid cost per service. The hospital's total outpatient Medicaid cost is the sum of the Medicaid cost per service for all line items.

(3) The following items are subtracted from the hospital's total outpatient Medicaid costs:

1. The total calculated Medicaid direct medical education cost for interns and residents based on the hospital's base-year cost report.

2. The total calculated Medicaid cost for services listed at 441—subrule 78.31(1), paragraphs “g” to “n.”

3. The total calculated Medicaid cost for ambulance services.

4. The total calculated Medicaid cost for services paid based on the Iowa Medicaid fee schedule.

(4) The remaining amount is multiplied by a factor to limit aggregate expenditures to available funding, divided by the hospital-specific case-mix index, and then divided by the total number of APC services for that hospital during the period July 1, 2006, through June 30, 2007, that were paid through September 10, 2007.

(5) Hospital-specific base APC rates are not computed for hospitals receiving reimbursement as critical access hospitals during any of the period included in the base-year cost report.

ITEM 8. Rescind paragraph 79.1(16)“f” and adopt the following new paragraph in lieu thereof:

f. Calculation of statewide base APC rate.

(1) The statewide average base APC rate is calculated by summing the outpatient Medicaid cost for all hospitals and subtracting the following:

1. The total calculated Medicaid direct medical education cost for interns and residents for all hospitals.

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2. The total calculated Medicaid cost for services listed at 441—subrule 78.31(1), paragraphs “g” to “n,” for all hospitals.

3. The total calculated Medicaid cost for ambulance services for all hospitals.

4. The total calculated Medicaid cost for services paid based on the Iowa Medicaid fee schedule for all hospitals.

(2) The resulting amount is multiplied by a factor to limit aggregate expenditures to available funding, divided by the statewide case-mix index, and then divided by the statewide total number of APC services for the period July 1, 2006, through June 30, 2007, that were paid through September 10, 2007.

(3) Data for hospitals receiving reimbursement as critical access hospitals during any of the period included in the base-year cost report is not used in calculating the statewide average base APC rate.

ITEM 9. Amend paragraph **79.1(16)“g”** as follows:

g. ~~Outlier~~ Cost outlier payment policy. Additional payment is made for ~~approved cases meeting or exceeding services provided during a single visit that exceed~~ the following Medicaid criteria of cost outliers for each ~~APG~~ APC. Outlier payments are determined on an APC-by-APC basis.

(1) ~~Cases qualify~~ An APC qualifies as a cost outliers outlier when ~~costs the cost of the service in a given case exceed~~ exceeds both the ~~cost~~ multiple threshold and the fixed-dollar threshold. For visits with a “statewide visit expected payment (SVEP)” equal to or between \$150 and \$700, this cost threshold is determined to be two times the statewide average APC-based payment or SVEP for that visit. For SVEPs greater than \$700, the outlier cost threshold for a hospital outpatient visit equals the statewide average payment plus \$500. There is no outlier threshold (or additional payment) for hospital visits with an SVEP less than \$150.

(2) The multiple threshold is met when the cost of furnishing an APC service exceeds 1.75 times the APC payment amount.

(3) The fixed-dollar threshold is met when the cost of furnishing an APC service exceeds the APC payment amount plus \$2,000.

(4) If both the multiple threshold and the fixed-dollar threshold are met, the outlier payment is calculated as 50 percent of the amount by which the hospital’s cost of furnishing the APC service or procedure exceeds the multiple threshold.

(5) ~~Costs are~~ The cost of furnishing the APC service or procedure is calculated using a single overall hospital-specific cost-to-charge ratios ratio determined in from the base year cost reports report. Additional payment for cost outliers is 60 percent of the excess between the hospital’s cost for the visit and the cost threshold established to define cost outliers. Costs appearing on a claim that are attributable to packaged APC services for which no separate payment is made are allocated to all nonpackaged APC services that appear on that claim. The amount allocated to each nonpackaged APC service is based on the proportion the APC payment rate for that APC service bears to the total APC rates for all nonpackaged APC services on the claim.

ITEM 10. Rescind paragraphs **79.1(16)“h”** and **79.1(16)“i”** and adopt the following **new** paragraphs in lieu thereof:

h. Payment to critical access hospitals. Initial, interim payments to critical access hospitals as defined in paragraph 79.1(5)“a” shall be the hospital’s line-item charge multiplied by the hospital’s Medicaid outpatient cost-to-charge ratio. These interim payments are subject to annual retrospective adjustment equal to the difference between the reasonable costs of covered services provided to eligible fee-for-service Medicaid members (excluding members in managed care) and the Medicaid reimbursement received. The department shall determine the reasonable costs of services based on the hospital’s annual cost reports and Medicare cost principles. When the interim amounts paid exceed reasonable costs, the department shall recover the difference.

(1) After any retrospective adjustment, the department shall update the cost-to-charge ratio to reflect as accurately as is possible the reasonable costs of providing the covered service to eligible fee-for-service Medicaid members for the coming year. The department shall base these changes on the most recent utilization as submitted to the Iowa Medicaid enterprise provider cost audit and rate-setting unit and Medicare cost principles.

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(2) Once a hospital begins receiving reimbursement as a critical access hospital, the cost-to-charge ratio is not subject to rebasing as provided in paragraph 79.1(16)“j.”

i. Cost-reporting requirements. Hospitals shall prepare annual cost reports in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants and in accordance with Medicare Provider Reimbursement Manual, CMS Publication 15, subject to the exceptions and limitations provided in this rule.

(1) Using electronic media, each hospital shall submit the following:

1. The hospital's Medicare cost report (Form CMS 2552-96, Hospitals and Healthcare Complex Cost Report);

2. Either Form 470-4515, Critical Access Hospital Supplemental Cost Report, or Form 470-4514, Hospital Supplemental Cost Report; and

3. A copy of the revenue code crosswalk used to prepare the Medicare cost report.

(2) The cost reports and supporting documentation shall be sent to the Iowa Medicaid Enterprise, Provider Cost Audit and Rate Setting Unit, 100 Army Post Road, P.O. Box 36450, Des Moines, Iowa 50315.

(3) The cost reports shall be submitted on or before the last day of the fifth calendar month following the close of the period covered by the report. For fiscal periods ending on a day other than the last day of the month, cost reports are due 150 days after the last day of the cost-reporting period. Extensions of the due date for filing a cost report granted by the Medicare fiscal intermediary shall be accepted by Iowa Medicaid.

ITEM 11. Amend paragraphs **79.1(16)“j”** to **79.1(16)“l”** as follows:

j. ~~Inflation factors, rebasing, and recalibration~~ Rebasing.

(1) ~~Inflation factors shall be set annually at levels that ensure payments that are consistent with efficiency, economy, and quality of care and that are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.~~ Effective January 1, 2009, and annually thereafter, the department shall update the OPPS APC relative weights using the most current calendar update as published by the Centers for Medicare and Medicaid Services.

(2) ~~Base amounts~~ Effective January 1, 2009, and every three years thereafter, blended base APC rates shall be rebased and APG weights recalibrated in 2005 and every three years thereafter. Cost reports used in rebasing shall be the hospital fiscal year-end Form CMS 2552-96, Hospital and Healthcare Complex Cost Report, as submitted to Medicare in accordance with Medicare cost report submission time lines for the hospital fiscal year ending during the preceding calendar year. If a hospital does not provide this cost report, including the Medicaid cost report and revenue code crosswalk, to the Iowa Medicaid enterprise provider cost audit audit and rate-setting unit by May 31 of a year in which rebasing occurs, the most recent submitted cost report will be used with the addition of a hospital market basket index inflation factor.

(3) ~~Case~~ Effective January 1, 2009, and every three years thereafter, case-mix indices shall be calculated recalculated using valid claims most nearly matching each hospital's fiscal year end.

(4) No change.

(5) ~~Hospitals receiving reimbursement as critical access hospitals shall not receive inflation of base payment amounts and shall not have base amounts rebased or weights recalibrated pursuant to this paragraph.~~

k. Payment to out-of-state hospitals. ~~Payment made to out~~ Out-of-state hospitals providing care to beneficiaries members of Iowa's Medicaid program is equal to either the shall be reimbursed in the same manner as Iowa statewide average case mix adjusted base amount or hospitals, except that APC payment amounts for out-of-state hospitals may be based on either the Iowa statewide average case mix adjusted base amount APC rate or the Iowa blended with the hospital-specific base amount APC rate for the out-of-state hospital.

(1) ~~Hospitals~~ For out-of-state hospitals that submit a cost report no later than May 31 in the most recent rebasing year, APC payment amounts will receive a case mix adjusted be based on the blended base APC rate using hospital-specific, Iowa-only Medicaid data and the Iowa statewide average cost per visit amount. For other out-of-state hospitals, APC payment amounts will be based on the Iowa statewide base APC rate.

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(2) If ~~a~~ an out-of-state hospital qualifies for reimbursement for direct medical education under Medicare guidelines, it shall qualify for such reimbursement ~~purposes in from the Iowa Medicaid program for services to Iowa Medicaid members.~~

l. Preadmission, preauthorization or inappropriate services. Inpatient or outpatient services ~~which that~~ require preadmission or preprocedure approval by the quality improvement organization (QIO) are updated yearly and are available from the QIO.

(1) The hospital shall provide the QIO authorization number on the ~~UB-92~~ claim form to receive payment. Claims for services requiring preadmission or preprocedure approval that are submitted ~~for payment~~ without this authorization number will be denied.

(2) To safeguard against other inappropriate practices, the department, through the QIO, will monitor admission practices and quality of care. If an abuse of the prospective payment system is identified, payments for abusive practices may be reduced or denied. In reducing or denying payment, Medicaid adopts the Medicare QIO regulations.

ITEM 12. Rescind and reserve paragraph **79.1(16)“m.”**

ITEM 13. Amend paragraph **79.1(16)“o”** as follows:

o. Inpatient admission after outpatient services. ~~A patient may be admitted to the hospital as an inpatient after receiving outpatient services.~~ If ~~the~~ a patient is admitted as an inpatient within three days of the day in which outpatient services were rendered, all outpatient services related to the principal diagnosis are considered inpatient services for billing purposes. The day of formal admission as an inpatient is considered as the first day of hospital inpatient services. EXCEPTION: This requirement does not apply to critical access hospitals.

ITEM 14. Rescind and reserve paragraph **79.1(16)“r.”**

ITEM 15. Amend paragraphs **79.1(16)“s”** to **79.1(16)“u”** as follows:

~~s. — Rescinded IAB 7/31/96, effective 10/1/96.~~

~~t. s. Limitations Limit on payments.~~

~~(1) Ambulatory patient groups~~ Payments under the ambulatory payment classification (APC) methodology, as well as other payments for outpatient services, are subject to upper limits limit rules set forth in 42 CFR 447.321, as amended to September 5, 2001, and 447.325, as amended to January 26, 1993. Requirements under these sections state that, in general, Medicaid may not make payments to providers that would exceed the amount that would be payable to providers under comparable circumstances under Medicare. In aggregate, the total Medicaid payments may not exceed the total payments received by all providers from recipients, carriers or intermediaries for providing comparable services under comparable circumstances under Medicare.

~~(2) t. Government-owned facilities.~~ Payments to a hospital that is owned or operated by state or non-state government shall not exceed the hospital's actual medical assistance program costs.

(1) The department shall perform a cost settlement annually after the desk review or audit of the hospital's cost report.

(2) The department shall determine the aggregate payments made to the hospital under the ~~ambulatory patient group~~ APC methodology and shall compare this amount to the hospital's actual medical assistance program costs as determined from the audit or desk review of the hospital's cost report. For purposes of this determination, aggregate payments shall include amounts received from the Medicaid program, including graduate medical education payments and outlier payments, as well as patient and third-party payments up to the Medicaid-allowed amount.

(3) If the aggregate payments exceed the hospital's actual medical assistance program costs, the amount by which payments exceed actual costs shall be requested and collected from the hospital.

u. QIO review. The QIO will review a yearly random sample of hospital outpatient service cases performed for Medicaid ~~recipients~~ members and identified on claims data from all Iowa and bordering state hospitals in accordance with the terms in the contract between the department and the QIO. The QIO contract is available for review at the Iowa Medicaid Enterprise Office, 100 Army Post Road, Des Moines, Iowa 50315.

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ITEM 16. Amend subparagraph **92.8(3)“a”(2)** as follows:

(2) ~~Outpatient hospital~~ Obstetrical services provided in an outpatient hospital setting when the ambulatory patient group (APG) submitted for payment is 175, 304, 305, 492, 493, or 494 and the primary or secondary diagnosis code is V22 through V24.9.

[Filed Emergency After Notice 6/11/08, effective 7/1/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6900B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2008 Iowa Acts, Senate File 2425, section 32(13), the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

These amendments reflect the following changes in Medicaid reimbursement rates enacted in 2008 Iowa Acts, Senate File 2425:

- Rate limits for the following provider categories are increased by 1 percent: advanced registered nurse practitioner, ambulance, ambulatory surgical center, audiologist, birth center, chiropractor, clinic, dentist, durable medical equipment and supply dealer, family planning clinic, hearing aid dispenser, home- and community-based habilitation services, home health agency, lead inspection agency, maternal health center, optician, optometrist, orthopedic shoe dealer, physical therapist, podiatrist, physician, psychologist, remedial services, and screening center.

- Rates for hospital inpatient and outpatient services (other than at critical access hospitals) are increased by 1 percent. The 1 percent increase has been incorporated into the new ambulatory payment classification rates and hospital outpatient fee schedule adopted in **ARC 6889B**, published herein. Funds for hospital reimbursement for direct and indirect medical education and disproportionate share payments are also increased by 1 percent to provide a 1 percent increase in reimbursement.

- The maximum reimbursement rate for inpatient care in a psychiatric medical institution for children is raised to \$167.19 per day. Rates for outpatient day treatment are increased by 1 percent.

- The dispensing fee for drugs is raised to \$4.57.

- Rates for the following home- and community-based waiver services are increased by 1 percent: adult day care, assistive devices, behavioral programming, case management (except for the elderly waiver), chore service, counseling, emergency response system, family and community support, family counseling, financial management, home-delivered meals, home health aide, homemaker, independent support broker, in-home family therapy, interim medical monitoring and treatment, nursing care, nutrition counseling, prevocational services, respite care, senior companion, supported community living, and supported employment. Elderly waiver case management reimbursement is defined in a different section of the Department's appropriations bill and is not included in the 1 percent increase. Consumer-directed attendant care providers have a rate increase of 3 percent. Monthly caps on waiver services are increased by 3 percent to accommodate the increase in provider rates. Annual or lifetime caps on home and vehicle modification and specialized medical equipment are increased by 1 percent.

Some language revisions have been made to clarify current policy for air ambulance services, home health aides, nursing care, home health agencies (including respite care and interim medical monitoring and treatment), and outpatient hospital care.

These amendments do not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on June 11, 2008.

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In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable because these amendments implement 2008 Iowa Acts, Senate File 2425, section 32, which authorizes the Department to adopt rules without notice and public participation and requires the increases to be effective July 1, 2008.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived, as authorized by 2008 Iowa Acts, Senate File 2425, section 32, subsection 13.

These amendments are also published herein under Notice of Intended Action as **ARC 6901B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4 and 2008 Iowa Acts, Senate File 2425, section 32, subsections 1, 8, and 10.

These amendments became effective July 1, 2008.

The following amendments are adopted.

ITEM 1. Amend paragraph **78.34(9)“g”** as follows:

g. Service payment shall be made to the enrolled home and vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home and vehicle modification provider following completion of the approved modifications. Payment of up to ~~\$6,000~~ \$6,060 per year may be made to certified providers upon satisfactory completion of the service. The service worker shall encumber up to \$500 per month within the monthly dollar cap allowed for the consumer until the amount of the modification is reached within the 12-month period.

ITEM 2. Amend paragraph **78.43(5)“g”** as follows:

g. Service payment shall be made to the enrolled home and vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home and vehicle modification provider following completion of the approved modifications. Payment of up to ~~\$6,000~~ \$6,060 per year may be made to certified providers upon satisfactory completion of the service. The service worker shall encumber up to \$500 per month within the monthly dollar cap allowed for the consumer until the amount of the modification is reached within the 12-month period.

ITEM 3. Amend paragraph **78.43(8)“a”** as follows:

a. Consumers may receive specialized medical equipment once per month until a maximum yearly usage of ~~\$6000~~ \$6,060 has been reached.

ITEM 4. Amend paragraph **78.46(2)“g”** as follows:

g. Service payment shall be made to the enrolled home and vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home and vehicle modification provider following completion of the approved modifications. Payment of up to ~~\$6,000~~ \$6,060 per year may be made to certified providers upon satisfactory completion of the service. The service worker shall encumber up to \$500 per month within the monthly dollar cap allowed for the consumer until the amount of the modification is reached within the 12-month period.

ITEM 5. Amend paragraph **78.46(4)“a”** as follows:

a. Consumers may receive specialized medical equipment once a month until a maximum yearly usage of ~~\$6000~~ \$6,060 has been reached.

ITEM 6. Amend rule **441—79.1(249A)**, introductory paragraph, as follows:

441—79.1(249A) Principles governing reimbursement of providers of medical and health services. The basis of payment for services rendered by providers of services participating in the medical assistance program is either a system based on the provider's allowable costs of operation or a fee schedule. Generally, institutional types of providers such as hospitals and nursing facilities are reimbursed on a cost-related basis, and practitioners such as physicians, dentists, optometrists, and similar providers are reimbursed on the basis of a fee schedule. Payments to health care providers that are owned or operated by Iowa state or non-state government entities shall not exceed the provider's cost of providing services to Medicaid

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members. Providers of service must accept reimbursement based upon the department's methodology without making any additional charge to the recipient.

ITEM 7. Amend subrule 79.1(2) as follows:

79.1(2) *Basis of reimbursement of specific provider categories.*

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Advanced registered nurse practitioners	Fee schedule	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Ambulance	Fee schedule	Ground ambulance: Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %. Air ambulance: A base rate of \$209.54 plus \$7.85 per mile for each mile the patient is carried Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Ambulatory surgical centers	Base rate fee schedule as determined by Medicare. See 79.1(3)	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Area education agencies	Fee schedule	Fee schedule in effect 6/30/00 plus 0.7%.
Audiologists	Fee schedule	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Birth centers	Fee schedule	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Chiropractors	Fee schedule	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Clinics	Fee schedule	Maximum physician reimbursement rate.
Community mental health centers and providers of mental health services to county residents pursuant to a waiver approved under Iowa Code section 225C.7(3)	Retrospective cost-related. See 79.1(25)	100% of reasonable Medicaid cost as determined by Medicare cost reimbursement principles.
Dentists	Fee schedule	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Durable medical equipment, prosthetic devices and medical supply dealers	Fee schedule. See 79.1(4)	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Family planning clinics	Fee schedule	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Federally qualified health centers	Retrospective cost-related See 441—88.14(249A)	1. Prospective payment rate as required by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA 2000) or an alternative methodology allowed thereunder, as specified in "2" below. 2. 100% of reasonable cost as determined by Medicare cost reimbursement principles. 3. In the case of services provided pursuant to a contract between an FQHC and a managed care organization

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<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
HCBS waiver service providers, including:		(MCO), reimbursement from the MCO shall be supplemented to achieve "1" or "2" above.
1. Adult day care	Fee schedule	Except as noted, limits apply to all waivers that cover the named provider. For AIDS/HIV, brain injury, elderly, and ill and handicapped waivers: Veterans Administration contract rate or \$21.90 <u>\$22.12</u> per half day, \$43.59 <u>\$44.03</u> per full day, or \$65.38 <u>\$66.03</u> per extended day if no Veterans Administration contract. For mental retardation waiver: County contract rate or, in the absence of a contract rate, \$29.18 <u>\$29.47</u> per half day, \$58.25 <u>\$58.83</u> per full day, or \$74.26 <u>\$75.00</u> per extended day.
2. Emergency response system	Fee schedule	Initial one-time fee \$49.04 <u>\$49.53</u> . Ongoing monthly fee \$38.14 <u>\$38.52</u> .
3. Home health aides	Retrospective cost-related	For AIDS/HIV, elderly, and ill and handicapped waivers: Maximum <u>Lesser of maximum Medicare rate in effect 6/30/06 6/30/08 plus 1% or maximum Medicaid rate in effect 6/30/08 plus 1%.</u> For mental retardation waiver: Maximum <u>Lesser of maximum Medicare rate in effect 6/30/06 6/30/08 plus 1% or maximum Medicaid rate in effect 6/30/08 plus 1%, converted to an hourly rate.</u>
4. Homemakers	Fee schedule	Maximum of \$19.61 <u>\$19.81</u> per hour.

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<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
5. Nursing care	For elderly and mental retardation waivers: Fee schedule as determined by Medicare.	For elderly waiver: \$82.10 <u>\$82.92</u> per visit. For mental retardation waiver: Maximum Lesser of maximum Medicare rate in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> % or maximum Medicaid rate in effect 6/30/08 <u>6/30/08</u> plus <u>1</u> %, converted to an hourly rate.
	For AIDS/HIV and ill and handicapped waivers: Agency's financial and statistical cost report and Medicare percentage rate per visit.	For AIDS/HIV and ill and handicapped waivers: Cannot exceed \$82.10 <u>\$82.92</u> per visit.
6. Respite care when provided by:		
Home health agency:		
Specialized respite	Rate Cost-based rate for nursing services provided by a home health agency (encounter services-intermittent services)	Maximum Lesser of maximum Medicare rate in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> % or maximum Medicaid rate in effect 6/30/08 <u>6/30/08</u> plus <u>1</u> %, converted to an hourly rate, not to exceed \$294 <u>\$296.94</u> per day.
Basic individual respite	Rate Cost-based rate for home health aide services provided by a home health agency (encounter services-intermittent services)	Maximum Lesser of maximum Medicare rate in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> % or maximum Medicaid rate in effect 6/30/08 <u>6/30/08</u> plus <u>1</u> %, converted to an hourly rate, not to exceed \$294 <u>\$296.94</u> per day.
Group respite	Retrospectively limited prospective rates. See 79.1(15)	\$12.99 <u>\$13.12</u> per hour not to exceed \$294 <u>\$296.94</u> per day.
Home care agency:		
Specialized respite	Retrospectively limited prospective rates. See 79.1(15)	\$33.42 <u>\$33.75</u> per hour not to exceed \$294 <u>\$296.94</u> per day.
Basic individual respite	Retrospectively limited prospective rates. See 79.1(15)	\$17.83 <u>\$18.01</u> per hour not to exceed \$294 <u>\$296.94</u> per day.
Group respite	Retrospectively limited prospective rates. See 79.1(15)	\$12.99 <u>\$13.12</u> per hour not to exceed \$294 <u>\$296.94</u> per day.
Nonfacility care:		
Specialized respite	Retrospectively limited prospective rates. See 79.1(15)	\$33.42 <u>\$33.75</u> per hour not to exceed \$294 <u>\$296.94</u> per day.
Basic individual respite	Retrospectively limited prospective rates. See 79.1(15)	\$17.83 <u>\$18.01</u> per hour not to exceed \$294 <u>\$296.94</u> per day.
Group respite	Retrospectively limited prospective rates. See 79.1(15)	\$12.99 <u>\$13.12</u> per hour not to exceed \$294 <u>\$296.94</u> per day.
Facility care:		
Hospital or nursing facility providing skilled care	Fee schedule	\$12.99 <u>\$13.12</u> per hour not to exceed daily per diem for skilled nursing facility level of care.
Nursing facility	Fee schedule	\$12.99 <u>\$13.12</u> per hour not to exceed daily per diem for nursing facility level of care.
Camps	Retrospectively limited prospective rates. See 79.1(15)	\$12.99 <u>\$13.12</u> per hour not to exceed \$294 <u>\$296.94</u> per day.

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<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Adult day care	Fee schedule	\$12.99 <u>\$13.12</u> per hour not to exceed rate for regular adult day care services.
Intermediate care facility for the mentally retarded	Fee schedule	\$12.99 <u>\$13.12</u> per hour not to exceed daily per diem for ICF/MR level of care.
Residential care facilities for persons with mental retardation	Fee schedule	\$12.99 <u>\$13.12</u> per hour not to exceed contractual daily per diem.
Foster group care	Fee schedule	\$12.99 <u>\$13.12</u> per hour not to exceed daily per diem rate for child welfare services.
Child care facilities	Fee schedule	\$12.99 <u>\$13.12</u> per hour not to exceed contractual daily per diem.
7. Chore service	Fee schedule	\$7.63 <u>\$7.71</u> per half hour.
8. Home-delivered meals	Fee schedule	\$7.63 <u>\$7.71</u> per meal. Maximum of 14 meals per week.
9. Home and vehicle modification	Fee schedule	For elderly waiver: \$1000 <u>\$1010</u> lifetime maximum. For mental retardation waiver: \$5000 <u>\$5050</u> lifetime maximum. For brain injury, ill and handicapped and physical disability waivers: \$6000 <u>\$6060</u> per year.
10. Mental health outreach providers	Fee schedule	On-site Medicaid reimbursement rate for center or provider. Maximum of 1440 units per year.
11. Transportation	Fee schedule	County contract rate or, in the absence of a contract rate, the rate set by the area agency on aging.
12. Nutritional counseling	Fee schedule	\$8.17 <u>\$8.25</u> per unit.
13. Assistive devices	Fee schedule	\$108.96 <u>\$110.05</u> per unit.
14. Senior companion	Fee schedule	\$6.53 <u>\$6.59</u> per hour.
15. Consumer-directed attendant care provided by:		
Agency (other than an elderly waiver assisted living program)	Fee agreed upon by consumer and provider	\$19.61 <u>\$20.20</u> per hour not to exceed the daily rate of \$113.32 <u>\$116.72</u> per day.
Assisted living program (for elderly waiver only)	Fee agreed upon by consumer and provider	For elderly waiver only: \$1,052 <u>\$1,117</u> per calendar month. Rate must be prorated per day for a partial month, at a rate not to exceed \$35.64 <u>\$36.71</u> per day.
Individual	Fee agreed upon by consumer and provider	\$13.08 <u>\$13.47</u> per hour not to exceed the daily rate of \$76.28 <u>\$78.56</u> per day.

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<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
16. Counseling		
Individual:	Fee schedule	\$10.68 <u>\$10.79</u> per unit.
Group:	Fee schedule	\$42.71 <u>\$43.14</u> per hour.
17. Case management	Fee schedule	For brain injury waiver: \$592.75 <u>\$598.68</u> per month. For elderly waiver: \$70 per month.
18. Supported community living	Retrospectively limited prospective rates. See 79.1(15)	\$34.63 <u>\$34.98</u> per hour, \$78.10 <u>\$78.88</u> per day not to exceed the maximum daily ICF/MR per diem.
19. Supported employment:		
Activities to obtain a job:		
Job development	Fee schedule	\$900 <u>\$909</u> per unit (job placement). Maximum of two units per 12 months.
Employer development	Fee schedule	\$900 <u>\$909</u> per unit (job placement). Maximum of two units per 12 months.
Enhanced job search	Retrospectively limited prospective rates. See 79.1(15)	Maximum of \$34.63 <u>\$34.98</u> per hour and 26 hours per 12 months.
Supports to maintain employment	Retrospectively limited prospective rates. See 79.1(15)	Maximum of \$34.63 <u>\$34.98</u> per hour for all activities other than personal care and services in an enclave setting. Maximum of \$19.61 <u>\$19.81</u> per hour for personal care. Maximum of \$6.13 <u>\$6.19</u> per hour for services in an enclave setting. Total not to exceed \$2,855.16 <u>\$2,883.71</u> per month. Maximum of 40 units per week.
20. Specialized medical equipment	Fee schedule	\$6000 <u>\$6060</u> per year.
21. Behavioral programming	Fee schedule	\$10.68 <u>\$10.79</u> per 15 minutes.
22. Family counseling and training	Fee schedule	\$42.71 <u>\$43.14</u> per hour.
23. Prevocational services	Fee schedule	For the brain injury waiver: \$37.07 <u>\$37.44</u> per day. For the mental retardation waiver: County contract rate or, in absence of a contract rate, \$47.74 <u>\$48.22</u> per day.

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
24. Interim medical monitoring and treatment:		
Home health agency (provided by home health aide)	Rate Cost-based rate for home health aide services provided by a home health agency (encounter services intermittent services)	Maximum Lesser of maximum Medicare rate in effect 6/30/06 plus 3% 6/30/08 plus 1% or maximum Medicaid rate in effect 6/30/08 plus 1%, converted to an hourly rate.
Home health agency (provided by nurse)	Rate Cost-based rate for nursing services provided by a home health agency (encounter services intermittent services)	Maximum Lesser of maximum Medicare rate in effect 6/30/06 plus 3% 6/30/08 plus 1% or maximum Medicaid rate in effect 6/30/08 plus 1%, converted to an hourly rate.
Child development home or center	Fee schedule	\$12.99 \$13.12 per hour.
25. Residential-based supported community living	Retrospectively limited prospective rates. See 79.1(15)	The maximum daily per diem for ICF/MR.
26. Day habilitation	Fee schedule	County contract rate or, in the absence of a contract rate, \$13.08 \$13.21 per hour, \$31.83 \$32.15 per half-day, or \$63.65 \$64.29 per day.
27. Environmental modifications and adaptive devices	Fee schedule	\$6000 \$6060 per year.
28. Family and community support services	Retrospectively limited prospective rates. See 79.1(15)	\$34.63 \$34.98 per hour.
29. In-home family therapy	Fee schedule	\$92.70 \$93.63 per hour.
30. Financial management services	Fee schedule	\$65 \$65.65 per enrolled consumer per month.
31. Independent support broker	Rate negotiated by consumer	\$15 \$15.15 per hour.
32. Self-directed personal care	Rate negotiated by consumer	Determined by consumer's individual budget.
33. Self-directed community supports and employment	Rate negotiated by consumer	Determined by consumer's individual budget.
34. Individual-directed goods and services	Rate negotiated by consumer	Determined by consumer's individual budget.
Hearing aid dispensers	Fee schedule plus product acquisition cost	Fee schedule in effect 6/30/06 6/30/08 plus 3 1%.
Home- and community-based habilitation services:		
1. Case management	Fee schedule based on MR/CMI/DD case management rates as set under 79.1(1)"d."	\$592.75 \$598.68 per month.
2. Home-based habilitation	Retrospective cost-related. See 79.1(24)	\$46.24 \$46.70 per hour or \$104.92 \$105.97 per day.

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
3. Day habilitation	Retrospective cost-related. See 79.1(24)	\$13.08 \$13.21 per hour, \$31.83 \$33.16 per half-day, or \$63.65 \$64.29 per day.
4. Prevocational habilitation	Retrospective cost-related. See 79.1(24)	\$9.81 \$9.91 per hour, \$23.87 \$24.11 per half-day, or \$47.74 \$48.22 per day.
5. Supported employment:		
Activities to obtain a job:		
Job development	Fee schedule	\$900 \$909 per unit (job placement). Maximum of two units per 12 months.
Employer development	Fee schedule	\$900 \$909 per unit (job placement). Maximum of two units per 12 months.
Enhanced job search	Retrospective cost-related. See 79.1(24)	Maximum of \$34.63 \$34.98 per hour and 26 hours per 12 months.
Supports to maintain employment	Retrospective cost-related. See 79.1(24)	\$6.13 \$6.19 per hour for services in an enclave setting; \$19.61 \$19.81 per hour for personal care; and \$34.63 \$34.98 per hour for all other services. Total not to exceed \$2,855.16 \$2,883.71 per month. Maximum of 40 units per week.
Home health agencies (Encounter services- intermittent services)	Retrospective cost-related	Rate Lesser of maximum Medicare rate in effect 6/30/06 plus 3 1% or maximum Medicaid rate in effect 6/30/08 plus 1%.
1. Skilled nursing, physical therapy, home health aide, and medical social services; home health care for maternity patients and children		
2. (Private duty nursing or and personal care and VFC vaccine administration for persons aged 20 and or under)	Interim fee schedule with retrospective cost setting based on Medicare methodology settlement	Rate Medicaid rate in effect 6/30/06 6/30/08 plus 3 1%.
3. Administration of vaccines	Physician fee schedule	Physician fee schedule rate.
Hospices	Fee schedule as determined by Medicare	Medicare cap. (See 79.1(14) "d")
Hospitals (Critical access)	Retrospectively adjusted prospective rates. See 79.1(1) "g" and 79.1(5)	The reasonable cost of covered services provided to medical assistance recipients or the upper limits for other hospitals, whichever is greater.
Hospitals (Inpatient)	Prospective reimbursement. See 79.1(5)	Reimbursement rate in effect 6/30/06 6/30/08 plus 3 1%.
Hospitals (Outpatient)	Prospective reimbursement for providers listed at 441 paragraphs 78.31(1) "a" to "f." or hospital outpatient fee schedule. See 79.1(16) "c"	Ambulatory patient group payment classification rate (plus an evaluation rate) and assessment payment or hospital outpatient fee schedule rate in effect 6/30/06 plus 3% 7/01/08.

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
	Fee schedule for providers listed at 441—paragraphs 78.31(1) “g” to “n.” See 79.1(16)	Rates in effect 6/30/06 plus 3%.
Independent laboratories	Fee schedule. See 79.1(6)	Medicare fee schedule. See 79.1(6)
Indian health service 638 facilities	1. Base rate as determined by the United States Office of Management and Budget for outpatient visits for American Indian and Alaskan native recipients members. 2. Fee schedule for service provided for all other Medicaid recipients members.	1. Office of Management and Budget rate published in the Federal Register for outpatient visit rate. 2. Fee schedule.
Infant and toddler program providers	Fee schedule	Fee schedule.
Intermediate care facilities for the mentally retarded	Prospective reimbursement. See 441—82.5(249A)	Eightieth percentile of facility costs as calculated from annual cost reports.
Lead inspection agency	Fee schedule	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus <u>± 1%</u> .
Local education agency services providers	Fee schedule	Fee schedule.
Maternal health centers	Reasonable cost per procedure on a prospective basis as determined by the department based on financial and statistical data submitted annually by the provider group	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus <u>± 1%</u> .
MR/CMI/DD case management providers	Monthly fee for service with cost settlement. See 79.1(1) “d”	Retrospective cost-settled rate.
Nursing facilities: 1. Nursing facility care	Prospective reimbursement. See 441—subrule 81.10(1) and 441—81.6(249A). The percentage of the median used to calculate the direct care excess payment allowance ceiling under 441—81.6(16) “d”(1) “1” and (2) “1” is 95% of the patient-day-weighted median. The percentage of the difference used to calculate the direct care excess payment allowance is 0%. The percentage of the median used to calculate the direct care excess payment allowance limit is 10% of the patient-day-weighted median. The percentage of the median used to calculate the non-direct care excess payment allowance ceiling under 441—81.6(16) “d”(1) “2” and (2) “2” is 96% of the patient-day-weighted median. The percentage of the difference used to calculate the non-direct care excess payment allowance	See 441—subrules 81.6(4) and 81.6(14) and paragraph 81.6(16) “f.” The direct care rate component limit under 441—81.6(16) “f”(1) and (2) is 120% of the patient-day-weighted median. The non-direct care rate component limit under 441—81.6(16) “f”(1) and (2) is 110% of the patient-day-weighted median.

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
	limit is 0%. The percentage of the median used to calculate the non-direct care excess payment allowance limit is 8% of the patient-day-weighted median.	
2. Hospital-based, Medicare-certified nursing care	Prospective reimbursement. See 441—subrule 81.10(1) and 441—81.6(249A). The percentage of the median used to calculate the direct care excess payment allowance ceiling under 441—81.6(16) “d”(3) “1” is 95% of the patient-day-weighted median. The percentage of the difference used to calculate the direct care excess payment allowance is 0%. The percentage of the median used to calculate the direct care excess payment allowance limit is 10% of the patient-day-weighted median. The percentage of the median used to calculate the non-direct care excess payment allowance ceiling under 441—81.6(16) “d”(3) “2” is 96% of the patient-day-weighted median. The percentage of the difference used to calculate the non-direct care excess payment allowance limit is 0%. The percentage of the median used to calculate the non-direct care excess payment allowance limit is 8% of the patient-day-weighted median.	See 441—subrules 81.6(4) and 81.6(14) and paragraph 81.6(16) “f.” The direct care rate component limit under 441—81.6(16) “f”(3) is 120% of the patient-day-weighted median. The non-direct care rate component limit under 441—81.6(16) “f”(3) is 110% of the patient-day-weighted median.
Opticians	Fee schedule. Fixed fee for lenses and frames; other optical materials at product acquisition cost	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Optometrists	Fee schedule. Fixed fee for lenses and frames; other optical materials at product acquisition cost	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Orthopedic shoe dealers	Fee schedule	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Pharmaceutical case management	Fee schedule. See 79.1(18)	Refer to 79.1(18).
Physical therapists	Fee schedule	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Physicians (doctors of medicine or osteopathy)	Fee schedule. See 79.1(7) “a”	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
<u>Anesthesia services</u>	<u>Fee schedule</u>	<u>Fee schedule in effect 6/30/08 plus 1%.</u>
Podiatrists	Fee schedule	Fee schedule in effect 6/30/06 <u>6/30/08</u> plus 3 <u>1</u> %.
Prescribed drugs	See 79.1(8)	\$4.52 <u>\$4.57</u> dispensing fee. (See 79.1(8) “a,” “b,” and “e”).

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Psychiatric medical institutions for children	Prospective reimbursement	Effective July 1, 2007, rate Rate based on actual costs on 6/30/07, not to exceed a maximum of \$165.53 \$167.19 per day.
1. Inpatient		
2. Outpatient day treatment	Fee schedule	Fee schedule in effect 6/30/06 6/30/08 plus 3 1%.
Psychologists	Fee schedule	Fee schedule in effect 6/30/06 6/30/08 plus 3 1%.
Rehabilitation agencies	Fee schedule	Medicare fee schedule; refer to 79.1(21).
[Provider categories of “rehabilitation services for adults with a chronic mental illness” and “rehabilitative treatment services” rescinded IAB 8/1/07, effective 9/5/07; removed from IAC 10/10/07]		
Remedial services	Retrospective cost-related <u>plus 1%.</u> See 79.1(23)	110% of average cost.
Rural health clinics	Retrospective cost-related See 441—88.14(249A)	1. Prospective payment rate as required by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA 2000) or an alternative methodology allowed thereunder, as specified in “2” below. 2. 100% of reasonable cost as determined by Medicare cost reimbursement principles. 3. In the case of services provided pursuant to a contract between an RHC and a managed care organization (MCO), reimbursement from the MCO shall be supplemented to achieve “1” or “2” above.
Screening centers	Fee schedule	Reimbursement rate for center in effect 6/30/06 6/30/08 plus 3 1%.
State-operated institutions	Retrospective cost-related	

ITEM 8. Amend subparagraphs **79.1(5)“y”(2)**, **79.1(5)“y”(5)**, and **79.1(5)“y”(8)** as follows:

(2) Allocation to fund for direct medical education. Except as reduced pursuant to subparagraph 79.1(5)“y”(3), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for direct medical education related to inpatient services for July 1, ~~2006~~ 2008, through June 30, ~~2007~~ 2009, is ~~\$8,556,547~~ \$8,642,112.

(5) Allocation to fund for indirect medical education. Except as reduced pursuant to subparagraph 79.1(5)“y”(6), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for indirect medical education related to inpatient services for July 1, ~~2006~~ 2008, through June 30, ~~2007~~ 2009, is ~~\$15,023,862~~ \$15,174,101.

(8) Allocation to fund for disproportionate share. The total amount of funding that is allocated to the graduate medical education and disproportionate share fund for disproportionate share payments for July 1, ~~2006~~ 2008, through June 30, ~~2007~~ 2009, is ~~\$7,181,823~~ \$7,253,641.

ITEM 9. Amend paragraph **79.1(8)“g”** as follows:

g. For services rendered after June 30, ~~2006~~ 2008, the professional dispensing fee is ~~\$4.52~~, \$4.57 or the pharmacy’s usual and customary fee, whichever is lower.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 10. Amend subparagraph **79.1(16)“v”(2)** as follows:

(2) Allocation to fund for direct medical education. Except as reduced pursuant to subparagraph 79.1(16)“v”(3), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for direct medical education related to outpatient services for July 1, ~~2006~~ 2008, through June 30, ~~2007~~ 2009, is ~~\$2,893,524~~ \$2,922,460.

ITEM 11. Amend paragraph **83.2(2)“b”** as follows:

b. Except as provided below, the total monthly cost of the ill and handicapped waiver services shall not exceed the established aggregate monthly cost for level of care as follows:

<u>Skilled level of care</u>	<u>Nursing level of care</u>	<u>ICF/MR</u>
\$2,554 <u>\$2,631</u>	\$878 <u>\$904</u>	\$3,110 <u>\$3,203</u>

(1) and (2) No change.

ITEM 12. Amend subparagraph **83.22(2)“c”(2)** as follows:

(2) Services must be the least costly available to meet the service needs of the consumer. The total monthly cost of the elderly waiver services exclusive of case management services shall not exceed the established monthly cost of the level of care. Aggregate monthly costs are limited as follows:

<u>Skilled level of care</u>	<u>Nursing level of care</u>
\$2,554 <u>\$2,631</u>	\$1,084 <u>\$1,117</u>

ITEM 13. Amend paragraph **83.42(2)“b”** as follows:

b. The total monthly cost of the AIDS/HIV waiver services shall not exceed the established aggregate monthly cost for level of care. The monthly cost of AIDS/HIV waiver services cannot exceed the established limit of ~~\$1,700~~ \$1,751.

ITEM 14. Amend paragraph **83.82(2)“d”** as follows:

d. The total cost of brain injury waiver services shall not exceed ~~\$2,730~~ \$2,812 per month. If more than \$500 is paid for home and vehicle modification services, the service worker shall encumber up to \$500 per month within the monthly dollar cap allowed for the consumer until the total amount of the modification is reached within a 12-month period.

ITEM 15. Amend paragraph **83.102(2)“b”** as follows:

b. The total cost of physical disability waiver services shall not exceed ~~\$640~~ \$659 per month. If more than \$500 is paid for home and vehicle modification services, the service worker shall encumber up to \$500 per month within the monthly dollar cap allowed for the consumer until the total amount of the modification is reached within a 12-month period.

ITEM 16. Amend paragraph **83.122(6)“b”** as follows:

b. The total cost of children’s mental health waiver services needed to meet the consumer’s needs may not exceed ~~\$1,818~~ \$1,873 per month.

[Filed Emergency 6/12/08, effective 7/1/08]

[Published 7/2/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6893B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 92, “IowaCare,” Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment removes the requirement that an applicant request the month of retroactive eligibility for IowaCare at the time of application or before the eligibility determination. Depending on how far in advance the applicant completes the application, the applicant may not be aware of the need for retroactive coverage at that time. The Department routinely approves exceptions to policy (waivers) in these circumstances. Retroactive coverage will now be available more uniformly and be provided more efficiently because eligibility does not depend on the applicant's having the knowledge and timely ability to file an exception request.

This amendment does not provide for waivers in specified situations because it removes a restriction. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on April 23, 2008, as **ARC 6723B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice.

The Council on Human Services adopted this amendment on June 11, 2008.

The Department finds that this amendment confers a benefit on applicants for IowaCare by allowing them more time to determine if they want to apply for retroactive coverage. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

This amendment is intended to implement Iowa Code chapter 249J.

This amendment became effective on July 1, 2008.

The following amendment is adopted.

Amend subrule 92.6(2) as follows:

92.6(2) Retroactive eligibility. IowaCare benefits shall also be available for the month preceding the month in which the application is filed ~~to applicants who meet the following conditions~~ if during that preceding month:

~~a. — The applicant makes the request for retroactive eligibility at the time of application and before the eligibility determination.~~

~~b. a. The applicant has received Medicaid expansion services from a provider within the Medicaid expansion network during the month for which retroactive eligibility is sought; and~~

~~c. b. The applicant would have been eligible for IowaCare in the month for which retroactive eligibility is sought if application had been made in that month.~~

[Filed Emergency After Notice 6/12/08, effective 7/1/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6902B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code Supplement section 234.6 and 2008 Iowa Acts, Senate File 2425, section 32(13), the Department of Human Services amends Chapter 150, “Purchase of Service,” Iowa Administrative Code.

This amendment implements a 1 percent across-the-board increase for social service providers as directed by 2008 Iowa Acts, Senate File 2425, section 32(5). This increase affects foster care placements in supervised apartment living and shelter care. The increase will be applied to reimbursement rates in effect on June 30, 2008, or to the provider's actual and allowable cost for each service plus inflation, whichever is less. The amendment eliminates references to adoption services, which are no longer available through a purchase of service contract.

This amendment does not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Council on Human Services adopted this amendment on June 11, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable because this amendment implements 2008 Iowa Acts, Senate File 2425, section 32, which authorizes the Department to adopt rules without notice and public participation and requires the increases to be effective July 1, 2008.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of this amendment should be waived, as authorized by 2008 Iowa Acts, Senate File 2425, section 32.

This amendment is also published herein under Notice of Intended Action as **ARC 6903B** to allow for public comment.

This amendment is intended to implement Iowa Code Supplement sections 234.6 and 234.35 and 2008 Iowa Acts, Senate File 2425, section 32.

This amendment became effective July 1, 2008.

The following amendment is adopted.

Amend paragraph **150.3(5)“p”** as follows:

p. Rate limits. Interruptions in service programs will not affect the rate. If an agency assumes the delivery of service from another agency, the rate shall remain the same as for the former agency.

(1) The combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the financial and statistical report submitted to the department. For the fiscal year beginning July 1, ~~2007~~ 2008, the maximum reimbursement rate shall be ~~\$91.45~~ \$92.36 per day, based on a 365-day year. If the department reimburses the provider at less than the maximum rate, the department shall adjust the provider's reimbursement rate to the provider's actual and allowable cost plus the inflation factor or to the maximum reimbursement rate, whichever is less.

(2) For the fiscal year beginning July 1, ~~2007~~ 2008, the maximum reimbursement rates for services provided under a purchase of social service agency contract (~~adoption~~, shelter care, and supervised apartment living) shall be increased to ~~3~~ 1 percent over the rates in effect on June 30, ~~2007~~ 2008, or increased to the provider's actual and allowable cost plus inflation, whichever is less.

(3) The rates may also be adjusted ~~under any of the following circumstances:~~

~~1. If if a new service was is added after June 30, 2007, 2008. The the initial reimbursement rate for the new service shall be based upon actual and allowable costs. A new service does not include a new building or location or other changes in method of service delivery for a service currently provided under the contract.~~

~~For adoption, the only time a provider shall be considered to be offering a new service is if the provider adds placement or postplacement services for the first time. Preparation of the child, preparation of the family and preplacement visits are components of the services listed above.~~

1. For shelter care, if the provider is currently offering shelter care under social services contract, the only time the provider shall be considered to be offering a new service is if the provider adds a service other than shelter care.

2. For supervised apartment living, the only time a provider shall be considered to be offering a new service is when the agency adds a cluster site or a scattered site for the first time. If, for example, the agency has a supervised apartment living cluster site, the addition of a new site does not constitute a new service.

3. If the department defines, in administrative rule, a new service as a social service that may be purchased, this shall constitute a new service for purposes of establishment of a rate. Once the rate for the new service is established for a provider, the rate will be subject to any limitations established by administrative rule or law.

~~2. (4)~~ 4. If a social service provider loses a source of income used to determine the reimbursement rate for the provider, the provider's reimbursement rate may be adjusted to reflect the loss of income, provided that the lost income was used to support actual and allowable costs of a service purchased under a purchase of service contract.

~~3. — Rescinded IAB 7/6/05, effective 7/1/05.~~

~~4. — Rescinded IAB 7/6/05, effective 7/1/05.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

5. — ~~Rescinded IAB 6/28/00, effective 7/1/00.~~

[Filed Emergency 6/12/08, effective 7/1/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6906B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6 and 2008 Iowa Acts, Senate File 2425, section 32(13), the Department of Human Services amends Chapter 156, "Payments for Foster Care and Foster Parent Training," Iowa Administrative Code.

This amendment increases basic reimbursement rates for foster family care as directed by 2008 Iowa Acts, Senate File 2425, section 32(4). This increase maintains the rates at 65 percent of the USDA estimate of the cost to raise a child in 2007, in compliance with Iowa Code section 234.38. By reference, these amounts are also the maximum payments allowed for foster care supervised apartment living maintenance payments, adoption subsidy maintenance payments, and guardianship subsidy payments.

This amendment does not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on June 11, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable because this amendment implements 2008 Iowa Acts, Senate File 2425, section 32, which authorizes the Department to adopt rules without notice and public participation and requires the increases to be effective July 1, 2008.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of this amendment should be waived, as authorized by 2008 Iowa Acts, Senate File 2425, section 32.

This amendment is also published herein under Notice of Intended Action as **ARC 6910B** to allow for public comment.

This amendment is intended to implement Iowa Code sections 234.6, 234.35, and 234.38 and 2008 Iowa Acts, Senate File 2425, section 32.

This amendment became effective July 1, 2008.

The following amendment is adopted.

Amend subrule 156.6(1) as follows:

156.6(1) Basic rate. A monthly payment for care in a foster family home licensed in Iowa shall be made to the foster family based on the following schedule:

<u>Age of child</u>	<u>Daily rate</u>
0 through 5	\$15.89 <u>\$16.36</u>
6 through 11	\$16.54 <u>\$17.01</u>
12 through 15	\$18.16 <u>\$18.62</u>
16 or over	\$18.37 <u>\$18.87</u>

[Filed Emergency 6/12/08, effective 7/1/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6911B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6 and 2008 Iowa Acts, Senate File 2425, section 32(13), the Department of Human Services amends Chapter 185, "Rehabilitative Treatment Services," Iowa Administrative Code.

These amendments implement a 1 percent across-the-board increase for group foster care service providers as directed by 2008 Iowa Acts, Senate File 2425, section 32(6). The increase will be applied to reimbursement rates in effect on June 30, 2008. Although rehabilitative treatment and supportive services have been discontinued, the rate structure in this chapter continues to be used for child welfare services provided by foster group care facilities.

The amendments also eliminate the subrule on statewide fixed rates, since the family-centered services for which those rates were used are no longer available through this type of contract. (See **ARC 5937B**, published in the Iowa Administrative Bulletin on June 6, 2007, and **ARC 6515B**, published in the Iowa Administrative Bulletin on January 2, 2008.)

These amendments do not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on June 11, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable because these amendments implement 2008 Iowa Acts, Senate File 2425, section 32, which authorizes the Department to adopt rules without notice and public participation and requires the increases to be effective July 1, 2008.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2008 Iowa Acts, Senate File 2425, section 32.

These amendments are also published herein under Notice of Intended Action as **ARC 6912B** to allow for public comment.

These amendments are intended to implement Iowa Code sections 234.6 and 234.35 and 2008 Iowa Acts, Senate File 2425, section 32.

These amendments became effective July 1, 2008.

The following amendments are adopted.

ITEM 1. Amend paragraph **185.112(1)"k"** as follows:

k. Once a negotiated rate is established based on the provisions of this subrule, it shall not be changed or renegotiated during the period of this rule except in the following circumstances:

(1) By mutual consent of the provider and the service area manager of the host area based upon the factors delineated at paragraph 185.112(1)"f," except that rates shall not be changed or renegotiated for the period of July 1, 2000, through June 30, ~~2008~~ 2009.

(2) In accordance with paragraph 185.112(6)"b," except that rates shall not be changed or renegotiated for services not assumed by a new provider for the period of July 1, 2000, through June 30, ~~2008~~ 2009.

(3) Rates may be changed when funds are appropriated for an across-the-board increase. A ~~3~~ 1 percent cost-of-living adjustment will be applied to those rates in effect as of June 30, ~~2007~~ 2008.

ITEM 2. Rescind and reserve subrule **185.112(14)**.

[Filed Emergency 6/12/08, effective 7/1/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6913B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 17A.3(1)“b,” Iowa Code Supplement section 16.5(1)“r,” and 2008 Iowa Acts, Senate File 2354, the Iowa Finance Authority hereby rescinds Chapter 27, “Military Service Member Home Ownership Assistance Program,” Iowa Administrative Code, and adopts a new Chapter 27 with the same title.

The purpose of this new chapter is to implement 2008 Iowa Acts, Senate File 2354.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers.

The Authority finds that notice and public participation are impracticable and contrary to the public interest in that 2008 Iowa Acts, Senate File 2354, took effect on July 1, 2008, and the normal notice and public participation process would delay implementation of Senate File 2354. The Authority is also simultaneously publishing a Notice of Intended Action as **ARC 6915B** herein.

The Authority finds that adoption of this chapter confers a benefit on the persons affected, eligible members of the armed forces, in that the rules ease and speed the administration of an important and popular state grant program which benefits those members of the armed forces. The Authority finds that these rules should be implemented as soon as feasible in order to facilitate the awarding of grants under the program and to avoid delays in real estate closings. Therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these rules is waived.

The Authority adopted these rules on June 4, 2008.

These rules became effective July 1, 2008.

These rules are intended to implement Iowa Code Supplement section 16.5(1)“r” and 2008 Iowa Acts, Senate File 2354.

The following amendment is adopted.

Rescind 265—Chapter 27 and adopt the following new chapter in lieu thereof:

CHAPTER 27

MILITARY SERVICE MEMBER HOME OWNERSHIP ASSISTANCE PROGRAM

265—27.1(16) Purpose. The purpose of the military service member home ownership assistance program is to help eligible members of the armed forces of the United States to purchase qualified homes in Iowa.

265—27.2(16) Definitions. As used in this chapter, unless the context otherwise requires:

“*Closing agent*” means the attorney, real estate firm, or closing company that is closing the cash sale qualifying purchase transaction and that prepares the cash sale settlement statement.

“*Eligible service member*” means a person purchasing his or her primary residence in the state of Iowa who, at the time of applying for a grant under the program, (1) is or was a member of the national guard, reserve, or regular component of the armed forces of the United States under Title 10 or Title 32 and has served at least 90 days of active duty service, other than training, beginning on or after September 11, 2001, and, if no longer in active service, was discharged in character other than dishonorable; (2) was honorably discharged due to injuries incurred while on active federal service beginning on or after September 11, 2001; or (3) is a surviving spouse of a service member who met the eligibility criteria of (1) or (2) above.

“*Home ownership assistance*” means the one-time grant of up to \$5,000 per eligible service member that may be used toward down payment or closing costs, or both, in the purchase of a qualified home. This grant does not require repayment except pursuant to rule 265—27.4(16).

“*Participating lender*” means a lender approved for participation in the authority’s first-time home buyer program that makes available the authority’s first-time home buyer program to customers in the same manner as other mortgage loan programs. This requirement applies to branch and affiliate organizations that facilitate mortgage financing with the military grant. The authority may require participating lenders

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to provide evidence of proof of compliance, such as origination of the authority's first-time home buyer mortgages or mortgage rate sheets evidencing availability of the authority's mortgage program. The authority maintains a list of participating lenders on its Web site: www.iowafinanceauthority.gov.

"Program" or *"military grant"* means the military service member home ownership assistance program authorized by 2008 Iowa Acts, Senate File 2354.

"Qualified home" means a home that is located in the state of Iowa, that is purchased by an eligible service member as the eligible service member's primary residence on or after July 1, 2008, and that falls into one of the following categories:

1. Single-family residence, including "stick-built" homes, modular homes, or manufactured homes, provided the home is attached to a permanent foundation and is taxed as real estate;
2. Condominium;
3. Townhome;
4. A property containing two to four residential units, where one unit is to be occupied by the eligible service member as his or her primary residence.

The following categories of property shall not constitute a qualified home:

- Multifamily properties of five units or more;
- Commercial or nonresidential property;
- Farmland or other investment property;
- Recreational vehicles, mobile homes, or trailers not attached to a permanent foundation.

"Qualified mortgage" means a permanent mortgage loan made pursuant to the authority's first-time home buyer mortgage program for eligible first-time home buyers and targeted area home buyers or, in cases where the home buyer is not eligible for the authority's first-time home buyer mortgage program, any permanent mortgage loan with amortized payments and a maturity date of not less than five years made by a participating lender. First-time home buyer mortgage program information may be obtained on the authority's Web site at www.iowafinanceauthority.gov.

"Status documentation" means written documentation of the applicant's status with the armed forces of the United States, typically a copy of a valid DD Form 214, showing character of service other than dishonorable, most recent four months of leave and earnings statements, or other documentation satisfactory to the Iowa department of veterans affairs.

"Title guaranty certificate" means the certificate issued by the title guaranty division of the authority pursuant to Iowa Code section 16.92 to ensure marketable title to the lender or the homeowner, or both. Information about title guaranty may be obtained at: www.iowafinanceauthority.gov.

265—27.3(16) Application procedure and determination of eligibility.

27.3(1) Prior approval. Whether the purchase of a qualified home is by mortgage financing or cash, a determination of the service member's eligibility by the Iowa department of veterans affairs and prior approval of the grant by the authority are required. A minimum of one week should be allowed for approval response from the authority.

27.3(2) Financed home purchases. In the case of the purchase of a qualified home that is to be financed, the eligible service member must apply for a grant under the program through a participating lender. The mortgage financing provided shall be the authority's first-time home buyer mortgage if the service member qualifies for it or another permanent mortgage if the service member does not qualify for the first-time home buyer mortgage. To apply for the military grant, the eligible service member shall provide a participating lender with status documentation, submit a bona fide purchase agreement with any addenda or attachments for a primary residence, complete a loan application on Form 1003, submit a copy of a government-issued photo identification card, and assist the participating lender in completing a grant application on a form approved by the authority which states the amount of the grant being requested. In the event the applicant is not eligible for the authority's first-time home buyer mortgage program, information evidencing ineligibility and acceptable documentation to the authority must accompany the application. The participating lender shall then transmit copies of the loan application, the status documentation, the purchase agreement, any necessary supporting documentation, the photo ID, and the grant application to the authority.

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27.3(3) *Cash home purchases.* In the case of a cash purchase of a qualified home, the eligible service member shall provide directly to the authority status documentation, a completed grant application form obtained from the authority and a bona fide purchase agreement with any addenda or attachments for a primary residence.

27.3(4) *Referral of status documentation to Iowa department of veterans affairs.* Upon receipt of the completed grant application, the authority shall submit the status documentation to the Iowa department of veterans affairs for verification that the applicant's duty status is consistent with the definition of "eligible service member." The Iowa department of veterans affairs shall be the final authority as to whether an applicant's duty status is consistent with the definition of "eligible service member."

27.3(5) *Notice of grant approval.* Upon confirmation of the applicant's service record by the Iowa department of veterans affairs, provided that the information submitted on the grant application form complies with the requirements of this chapter, the authority shall notify the participating lender, or eligible service member in the case of a cash purchase, that the grant application has been approved.

27.3(6) *Gaps in funding.* In cases where the grant funds are unavailable during the home purchase process, approved transactions shall be placed on a waiting list. When funds are again available and where the home purchase closed without the benefit of military grant funds being applied toward closing costs or down payment, the proceeds of the grant shall be paid (1) directly to the participating lender/servicing lender to be applied toward the qualified mortgage loan's principal balance or to replenish the eligible service member's contribution toward home purchase, or (2) if the qualified home was purchased pursuant to a cash purchase transaction, directly to the eligible service member. Additional documentation required shall include a statement executed by the applicant authorizing the grant to be applied to the principal balance.

265—27.4(16) *Grant award.* Grants awarded hereunder shall be up to \$5,000 toward the purchase of a qualified home and may be used for down payment or for closing costs, or for both. Grant funds must be applied to the purchase of a qualified home and, in the case of mortgage financing, the mortgage must be a qualified mortgage. Any grant proceeds which are not used for down payment or closing costs toward the purchase of a qualified home which is financed by a mortgage must be returned to the authority.

27.4(1) *Grant reimbursement.* The participating lender or cash payment home buyer shall advance funds at closing in an amount equal to the amount of the grant on behalf of the eligible service member to be applied toward closing costs or the down payment. The participating lender or cash payment home buyer, as applicable, shall, within 30 days of closing, submit to the authority a copy of the executed HUD-1 Settlement Statement (or, if the transaction is a cash purchase, the eligible service member may use the settlement statement certified by a closing agent and the eligible service member), a copy of the deed conveying title to the qualified home, a copy of a title guaranty certificate issued for the qualified home, and the military grant agreement and certification (form obtained from the authority) for reimbursement for the amount of the grant. In the event the mortgage financing is not made pursuant to the authority's first-time home buyer program, reimbursement documentation shall include a certified copy of the promissory note and mortgage.

27.4(2) *Grant restrictions and limitations.* All grants under the program are subject to funding availability. Grants will be awarded in the order in which completed grant applications are received. Grants awarded pursuant to the program are personal to their recipients and may not be assigned. Only one grant shall be awarded per home purchase. An eligible service member shall receive only one grant award under the program. While program funds are available, the grant award shall be valid for 60 days in the case of purchases of existing or completed property and 120 days in the case of purchases of property being constructed or renovated. A reasonable extension may be granted with evidence of a purchase loan in progress which has been delayed due to circumstances beyond the service member's control.

265—27.5(16) *Income, purchase price and qualified mortgage.* There are no income or purchase price limits under the program except that eligible service members purchasing with mortgage financing who are eligible for the authority's first-time home buyer program, whether a first-time home buyer or non-first-time home buyer purchasing in a targeted area, must use the authority's first-time home buyer mortgage program. Service members who are not eligible for the authority's first-time home buyer mortgage program and are not purchasing on cash basis, must use other permanent mortgages made by the participating lender. Service

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members may also, if eligible, use other grant funds from the authority, grant fund assistance available through other public agencies or nonprofit organizations, the service member's employer, or any forgivable, "soft second" lien subsidy. Information about the authority's first-time home buyer program or how to contact a participating lender may be obtained on the authority's Web site at www.iowafinanceauthority.gov.

These rules are intended to implement Iowa Code Supplement section 16.5(1)"r" and 2008 Iowa Acts, Senate File 2354.

[Filed Emergency 6/12/08, effective 7/1/08]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6867B

PHARMACY BOARD[657]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 3, "Pharmacy Technicians," Iowa Administrative Code.

These amendments add, delete, or modify various definitions relating to national certification of pharmacy technicians, recognize certification from either of two certification entities if that certification is attained and maintained prior to July 1, 2010, and establish requirements for accreditation of national certification entities that will be accepted beginning July 1, 2010.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

These amendments were approved during the June 3, 2008, regular meeting of the Board of Pharmacy.

The Board finds, pursuant to Iowa Code section 17A.4(2), that notice and public participation are impracticable due to the immediate need for these amendments in order to amend rules previously adopted but not yet effective. Emergency adoption of these amendments is necessary to ensure that the effective date of these amendments coincides with the effective date of rules adopted and filed in the March 26, 2008, Iowa Administrative Bulletin as **ARC 6668B** and whose effective date was subsequently delayed until July 9, 2008, by the Administrative Rules Review Committee at its April 4, 2008, meeting. Emergency adoption of these amendments will eliminate the confusion that would have been caused by the establishment of differing requirements during the period of notice and comment. The effective date of the previously filed rules was delayed due to objections regarding approved national certification processes; those objections have been resolved by the amendments adopted herein.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments should be made effective on July 9, 2008. These amendments confer a benefit on pharmacy technicians and the public by ensuring comparable standards for national certification entities recognized by the Board, thereby ensuring that national certification will result in a standard form of measurement for technician competency. The amendments provide that a pharmacy technician who voluntarily attains national certification from either of two certification entities prior to July 1, 2010, will not be required to recertify with an accredited certification entity as long as the technician maintains that certification.

These amendments are also published herein under Notice of Intended Action as **ARC 6868B** in order to allow for public comment.

These amendments will become effective July 9, 2008.

These amendments are intended to implement Iowa Code section 155A.33 and Iowa Code Supplement sections 155A.6A and 155A.39.

The following amendments are adopted.

ITEM 1. Amend rule 657—3.1(155A) as follows:

657—3.1(155A) Definitions. For the purposes of this chapter, the following definitions shall apply:

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“Board” means the Iowa board of pharmacy.

“Cashier” means a person whose duties within the pharmacy are limited to accessing finished, packaged prescription orders and processing payments for and delivering such orders to the patient or the patient’s representative.

“Certified pharmacy technician” or *“certified technician”* means an individual who holds a valid current national certification ~~from the ICPT or the PTCB~~ and who has registered with the board as a certified pharmacy technician. The term includes an individual registered with the board who voluntarily acquired certification as provided in subrule 3.5(2).

“Delivery” means the transport and conveyance of a finished, securely packaged prescription order to the patient or the patient’s caregiver.

~~*“ExCPT”* means the Exam for the Certification of Pharmacy Technicians developed and administered by the ICPT.~~

~~*“ICPT”* means the Institute for the Certification of Pharmacy Technicians.~~

“Nationally accredited program” means a program and examination for the certification of pharmacy technicians that is accredited by the NCCA.

“NCCA” means the National Commission for Certifying Agencies.

“Nuclear pharmacy technician” means a person who is employed in Iowa by a licensed nuclear pharmacy under the responsibility of an Iowa-licensed qualified nuclear pharmacist to assist in the technical functions of the practice of pharmacy pursuant to 657—Chapter 16.

“Pharmacy technician” or *“technician”* means a person who is employed in Iowa by a licensed pharmacy under the responsibility of an Iowa-licensed pharmacist to assist in the technical functions of the practice of pharmacy, as provided in rules 3.22(155A) through 3.24(155A).

“Pharmacy technician certification” or *“national certification”* means a certificate issued by a national pharmacy technician certification authority ~~approved by the board~~ accredited by the NCCA attesting that the technician has successfully completed the requirements of the certification program. The term includes evidence of renewal of the national certification. “National certification,” as that term relates to a nuclear pharmacy technician working exclusively in an Iowa-licensed nuclear pharmacy, shall be as defined in rule 657—16.2(155A).

“Pharmacy technician trainee” or *“technician trainee”* means an individual who is in training to become a pharmacy technician and who is in the process of acquiring national certification as a pharmacy technician as provided in rule 3.5(155A).

“Pharmacy technician training” or *“technician training”* means education or experience acquired for the purpose of qualifying for and preparing for national certification.

~~*“PTCB”* means the Pharmacy Technician Certification Board.~~

“Supervising pharmacist” means an Iowa-licensed pharmacist who is on duty in an Iowa-licensed pharmacy and who is responsible for the actions of a pharmacy technician or other supportive personnel.

“Supportive personnel” means a person, other than a licensed pharmacist, a registered pharmacist-intern, or a registered pharmacy technician, who may perform nontechnical duties assigned by the pharmacist under the pharmacist’s supervision, including delivery, billing, cashier, and clerical functions.

ITEM 2. Amend rule 657—3.5(155A) as follows:

¹**657—3.5(155A) Certification of pharmacy technicians.** Prior to July 1, 2010, the certification and recertification of pharmacy technicians shall be voluntary and not mandatory. Beginning July 1, 2010, the certification of pharmacy technicians shall be required as provided by this rule. National certification does not supplant the need for licensed pharmacist control over the performance of delegated functions, nor does national certification exempt the pharmacy technician from registration pursuant to these rules.

3.5(1) Voluntary certification prior to July 1, 2010. An individual who holds a valid current national certification from the Institute for the Certification of Pharmacy Technicians (ICPT) or the Pharmacy Technician Certification Board (PTCB) and who acquired such certification prior to July 1, 2010, shall be deemed to have met the requirement for national certification beginning July 1, 2010, provided the certification is maintained in current standing.

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~~3.5(1)~~ 3.5(2) ~~Approved pharmacy technician~~ Required certification effective July 1, 2010. The board hereby approves the PTCB Beginning July 1, 2010, a pharmacy technician shall acquire national certification through any NCCA-accredited pharmacy technician certification program and examination, the successful completion of which fulfills the requirement for national certification. ~~The board also approves the ICPT certification program and ExCPT, the successful completion of which fulfills the requirement for national certification.~~ National certification of a nuclear pharmacy technician employed solely in the practice of nuclear pharmacy shall be pursuant to certification requirements identified in 657—Chapter 16.

~~3.5(2)~~ 3.5(3) *Pharmacy technician trainee.* Beginning July 1, 2009, a person who is in the process of acquiring national certification as a pharmacy technician shall register with the board as a pharmacy technician trainee. The registration shall be issued for a period of one year and shall not be renewed.

~~3.5(3)~~ 3.5(4) *Certified pharmacy technician.* Beginning July 1, 2010, all applicants for a new pharmacy technician registration, except as provided by subrule ~~3.5(2)~~ 3.5(3), and all applicants for renewal of a pharmacy technician registration shall provide proof of current national pharmacy technician certification and shall complete the application for certified pharmacy technician registration.

ITEM 3. Amend subrules 3.10(2) and 3.10(3) as follows:

3.10(2) *Registration effective beginning July 1, 2009.* The fee for obtaining an initial certified pharmacy technician registration or for biennial renewal of a certified pharmacy technician registration beginning July 1, 2009, shall be \$50 plus applicable surcharge pursuant to rule 657—30.8(155A).

3.10(3) *Technician trainee registration effective beginning July 1, 2009.* The fee for a one-year pharmacy technician trainee registration shall be \$20 plus applicable surcharge pursuant to rule 657—30.8(155A).

[Filed Emergency 6/9/08, effective 7/9/08]

[Published 7/2/08]

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ARC 6869B

PHARMACY BOARD[657]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 18, "Centralized Prescription Filling and Processing," Iowa Administrative Code.

The amendments define "mail order pharmacy" and require that a pharmacist providing central fill or central processing functions as an employee of a licensed pharmacy located in Iowa must be licensed to practice pharmacy in Iowa. The amendments also exempt a central fill pharmacy from the requirement to return a central fill prescription to the originating pharmacy for delivery to the patient if the central fill pharmacy is a mail order pharmacy and provide that a central fill or central processing pharmacy sharing a common central processing unit with an originating pharmacy may perform drug use review, subject to specific requirements of subrule 18.3(3), paragraph "b."

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

The amendments were approved during the June 3, 2008, meeting of the Board of Pharmacy.

The Board finds, pursuant to Iowa Code section 17A.4(2), that notice and public participation are impracticable due to the immediate need for these amendments in order to amend rules previously adopted but not yet effective. Emergency adoption of these amendments is necessary to ensure that the effective date of these amendments coincides with the effective date of rules Adopted and Filed in the March 26, 2008, Iowa Administrative Bulletin as **ARC 6671B** and whose effective date was subsequently delayed until July 9, 2008, by the Administrative Rules Review Committee at its April 4, 2008, meeting. Emergency adoption of these amendments eliminates the confusion that would be caused by establishment of differing requirements during the period of notice and comment. The effective date of the previously filed rules was delayed due to objections to provisions that allowed only the originating pharmacy to deliver central fill

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prescriptions and to the requirement that drug utilization review be performed only by a pharmacist at the originating pharmacy; those objections have been resolved by the amendments adopted herein.

The Board finds, pursuant to Iowa Code subsection 17A.5(2)“b”(2), that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments should be made effective on July 9, 2008. These amendments confer a benefit to pharmacies and the public by authorizing safe and practical processes for the outsourcing of prescription filling and processing activities. The Board made these amendments effective on July 9, 2008, so that the effective date of the previously filed rules will coincide with the effective date of these amendments, eliminating the confusion that would be caused by having conflicting requirements during the normal comment period.

These amendments are also published herein under Notice of Intended Action as **ARC 6870B** in order to allow for public comment.

These amendments will become effective July 9, 2008.

These amendments are intended to implement Iowa Code sections 155A.13 and 155A.13A.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definition in rule **657—18.2(155A)**:

“*Mail order pharmacy*” means a pharmacy located within a United States jurisdiction whose primary business is to dispense a prescription drug or device pursuant to a valid prescription drug order and to deliver the drug or device to a patient, including a patient in this state, via the United States Postal Service, a common carrier, or a delivery service. “Mail order pharmacy” includes a pharmacy that does business via the Internet or other electronic media.

ITEM 2. Amend paragraph **18.3(2)“c”** as follows:

c. Each pharmacist providing centralized prescription drug order processing or filling functions as an employee or agent of a central processing or central fill pharmacy located within Iowa shall maintain active licensure to practice pharmacy in Iowa.

ITEM 3. Amend subrule 18.3(3) as follows:

18.3(3) Originating pharmacy responsibility. ~~The~~ Except as specifically provided by this subrule, the originating pharmacy shall be responsible for all dispensing functions as the term “dispense” is defined in rule 18.2(155A). An originating pharmacy contracting only for centralized filling shall retain responsibility for all processing functions, and an originating pharmacy contracting only for centralized processing shall retain responsibility for all filling functions.

a. A mail order pharmacy engaged in the centralized filling of prescription drug orders may deliver a filled prescription directly to the patient and shall not be required to return the filled prescription to the originating pharmacy.

b. A central fill or a central processing pharmacy that shares a common central processing unit with the originating pharmacy may perform prospective drug use review (DUR) pursuant to rule 657—8.21(155A). Only a pharmacist shall perform the DUR; the review shall not be delegated to a pharmacy technician, registered nurse, or other pharmacy support person. The pharmacist performing the DUR shall document in the shared patient record all concerns, recommendations, observations, and comments resulting from that review. The pharmacist at the originating pharmacy shall utilize the DUR notes in counseling the patient pursuant to rule 657—6.14(155A).

[Filed Emergency 6/9/08, effective 7/9/08]

[Published 7/2/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6898B

PUBLIC SAFETY DEPARTMENT[661]**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner hereby amends Chapter 16, “State Building Code—Factory Built Structures,” and adopts new Chapter 322, “State Building Code—Manufactured Housing Support and Anchorage Systems,” Iowa Administrative Code.

Responsibility for establishing standards for the installation of manufactured housing in Iowa is assigned by Iowa Code section 103A.7 to the Building Code Commissioner, who is charged with establishing such standards as part of the State Building Code, with the approval of the Building Code Advisory Council. Standards for support and anchoring systems are a critical element of the installation requirements. The rules adopted herein implement requirements for support and anchoring systems and some closely related requirements. Changes have been incorporated to conform with new federal requirements adopted by the U.S. Department of Housing and Urban Development, and the rules are located in a new chapter as part of a general renumbering of the rules of the Department of Public Safety. In order to conform with the federal requirements in a timely manner, these rules are being adopted through emergency procedures and became effective July 1, 2008. In addition, rules 661—16.622(103A), 661—16.625(103A), and 661—16.626(103A), which are now obsolete due to this emergency rule making and the emergency rule making published herein as **ARC 6881B**, are rescinded.

Pursuant to Iowa Code section 17A.4(2), the Commissioner finds that notice and public participation prior to the adoption of these amendments are impracticable, as it is essential that the new requirements for support and anchoring systems for manufactured homes be made effective consistent with federal requirements.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Commissioner further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments be made effective July 1, 2008, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by ensuring that support and anchoring systems for manufactured homes in Iowa will be installed consistent with federal requirements.

These amendments are also being proposed in a Notice of Intended Action, which is published herein as **ARC 6897B**. The Notice will provide for public participation in the rule-making process, including a public hearing. This process will culminate in the adoption of these amendments through the normal rule-making process, with any public input received during the comment period having been taken into account.

These amendments became effective July 1, 2008.

These amendments are intended to implement Iowa Code section 103A.9.

The following amendments are adopted.

ITEM 1. Rescind and reserve rules **661—16.622(103A)**, **661—16.625(103A)**, and **661—16.626(103A)**.

ITEM 2. Adopt the following new 661—Chapter 322:

CHAPTER 322
STATE BUILDING CODE—
MANUFACTURED HOUSING SUPPORT AND ANCHORAGE SYSTEMS

661—322.1 Reserved.

661—322.2(103A) Definitions. The definitions in 661—subrule 16.620(4) apply to the rules in this chapter.

661—322.3 to 322.10 Reserved.

661—322.11(103A) Support and anchorage of manufactured homes.

322.11(1) Manufactured homes shall be installed in accordance with one of the following paragraphs, as applicable:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

a. Homes manufactured prior to October 20, 2008, shall be installed with support and anchorage as recommended by the manufacturer and as required by 24 CFR Part 3280, Manufactured Home Construction and Safety Standards, as published April 1, 2004; or

b. Homes manufactured on or after October 20, 2008, shall be installed in accordance with 24 CFR Part 3285, Model Manufactured Home Installation Standards, as published October 19, 2007; or

c. With a support and anchorage system designed by a licensed professional engineer; or

d. With a support and anchorage system that complies with subrules 322.11(2) and 322.11(3). This option shall apply only if the manufacturer's instructions are not available or the unit was manufactured before June 15, 1976. "The manufacturer's instructions are not available" means that the installer has requested and been unable to obtain the instructions from the manufacturer or its successor company and has requested and been unable to obtain the instructions from the building code bureau.

EXCEPTION: Minor adjustments in pier locations may be necessary to avoid utility and service lines. Additional supports may be needed to ensure that the maximum allowed distance between supports and anchors is not exceeded.

322.11(2) Requirements for support system installations.

a. Piers placed on foundations shall be installed and centered directly under the main frame longitudinal beams. The piers should not be farther apart than 10 feet on centers for manufactured homes 12 feet wide or less and not more than 8 feet on centers for manufactured homes over 12 feet wide to less than 16 feet wide and no more than 6 feet on centers for manufactured homes 16 feet wide or more. The main frame, front or back, should not extend farther than 2 feet beyond the centerline of the end piers.

NOTE: When making excavations for footings and piers on private property, installers shall take precautions to ensure that no telephone, electrical, plumbing or water lines are contacted. Utility line locations shall be verified with the property owner or property owner's representative.

b. Pier foundations shall be placed below the frostline on level, undisturbed soil, or on controlled fill that is free of grass and organic materials. (A small amount of sand may be of use to provide a level surface.) All pier foundations shall be set level, and piers must be installed plumb. The pier foundation shall be at least a 16" × 16" × 4" solid concrete pad, precast or poured in place, or other approved material. Two nominal 4" × 8" × 16" solid concrete blocks may be used provided that the joint between the blocks is parallel to the main frame longitudinal beam. Concrete used in foundations shall have a 28-day compressive strength of not less than 3,000 pounds per square inch (3,000 psi).

c. Unless otherwise directed by the owner of the site, the soil-bearing capacity of the site may be assumed to be 2,000 pounds per square foot. The acceptable construction under this subrule is based upon a soil-bearing capacity of 2,000 pounds per square foot. Sites with less soil-bearing capacity will require increased-size footings.

EXPLANATION: The permissible footing sizes and pier spacing are based upon a combined live and dead load of 65 pounds per square foot of unit. This assumes that the full snow and internal live load will not be present at the same time.

d. Piers may be constructed of concrete or undamaged nominal 8" × 8" × 16" concrete blocks, open-celled or solid, placed on the pier foundation. All open-celled concrete block shall be installed with the cells of the block in a vertical position. Nominal 2" × 8" × 16" or nominal 4" × 8" × 16" solid concrete blocks may be utilized as needed to achieve the necessary heights of the piers for a particular installation. A nominal 2" × 8" × 16" wood plate, or equivalent, shall be placed on top of each pier, unless there is at least 4 inches of solid block, with shims fitted and driven between the wood plate or solid block and the main frame longitudinal beam. The wood blocking shall not occupy more than a nominal 2 inches of vertical space, and shims shall not occupy more than 1 inch of vertical space. Shims which have a thickness of more than 3/8" shall be hardwood.

(1) Piers up to 40 inches in height, except corner piers over three blocks high (a nominal 24"), may be of single-block construction and shall be installed transverse (right angle) to the main frame longitudinal beam.

(2) Piers over 40 inches in height but not exceeding 80 inches in height and corner piers over three blocks high shall be of double-block construction with every other course either parallel or transverse (right angle) to the main frame longitudinal beam. These piers shall be capped with a nominal 16" × 16" × 4" solid concrete block or equivalent. Wood blocking and hardwood shims shall be installed accordingly.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

(3) Piers over 80 inches in height shall be of reinforced concrete or of double-block construction and installed exactly according to the procedure given in subparagraph (2) above. Only celled concrete blocks shall be used (with open cells vertical) with 3/8" diameter or larger steel reinforcing rods placed in the pier corners and all cells filled with 3,000 psi concrete. Wood blocking and shims shall be installed accordingly.

322.11(3) Requirements for anchorage systems. When instructions are not provided by the manufacturer, ties shall be attached vertically and diagonally to a system of ground anchors in a manner as illustrated in Figures 4 and 5. The minimum number of ties required are listed in Table 6–A. There shall be a diagonal tie between the ground anchors and the unit at each vertical tie. Additional diagonal ties may be required between vertical ties. The ties shall be as evenly spaced as practicable along the length of the unit with not over 8 feet open on each end.

a. Ties may be either steel cable, steel strapping, or other materials that meet the requirements of 322.11(3)“f.” Ties are to be fastened to ground anchors and drawn tight with galvanized turnbuckles or yoke-type fasteners and tensioning devices. Turnbuckles shall be ended with jaws of forged or welded eyes (hook ends are not approved).

b. When continuous straps (over-the-top tie-downs) are provided as vertical ties, they should be positioned at rafters and studs to prevent structural damage. Where a vertical tie and diagonal tie are located at the same place, both ties may be connected to a single doublehead ground anchor provided that the anchor used is capable of carrying the combined loads and the anchor is included on a list of approved products maintained by the commissioner.

c. Cable used for ties shall be either galvanized steel or stainless steel and shall have a breaking strength of at least 4,725 pounds. Cable should be either 7/32" diameter or greater (7 × 7) steel cable or 1/4" diameter or greater (7 × 19) aircraft cable. All cable ends should be secured with at least two I-bolt-type cable clamps or other nationally approved fastening devices.

d. When flat steel straps are used as ties, they shall be type 1, class B, grade 1, 1¼" wide and 0.035" thick, conforming with federal standard QQ-S-781-F, with a breaking strength of at least 4,725 pounds. Zinc coating (weather protection) shall be a minimum of 0.30 ounces per square foot of surface. Steel strap ties shall terminate with D-rings, bolts, or other nationally approved fastening devices that will not cause distortion or reduce the breaking strength of the ties.

e. The direction of pull of the diagonal ties should be at a right angle to the main frame longitudinal beam. Connection of the diagonal tie to the main frame longitudinal beam should be in accordance with anchor system instructions for those fastening devices. When steel strap ties are used, care should be exercised that the minimum bending radius is adhered to so the breaking strength is not reduced.

f. The anchorage materials shall be capable of resisting an allowable minimum working load of 3,150 pounds (pullout in a vertical direction) with no more than 2 percent elongation and shall withstand a 50 percent overload. All anchorage materials shall be resistant to weathering deterioration at least equivalent to that provided by a coating of zinc on steel strapping of not less than 0.30 ounces per square foot surface coated. Anchors to reinforced concrete slab or to rock shall be of comparable strength as provided within this paragraph.

Each ground anchor, when installed, shall be capable of resisting an allowable working load at least equal to 3,150 pounds in the direction of the ties plus a 50 percent overload (4,750 pounds total) without failure. Failure shall be considered to have occurred when the point of connection between the tie and anchor moves more than 2 inches at 4,750 pounds in the direction of the vertical tie when anchoring equipment is installed in accordance with the anchorage manufacturer's instructions. Those ground anchors which are designed to be installed so that the loads on the anchor are other than direct withdrawal shall be designed and installed to resist an applied design load of 3,150 pounds at 45° from horizontal without displacing the anchor more than 4 inches horizontally at the point where the tie attaches to the anchor.

Anchors designed for connection of multiple ties shall be capable of resisting the combined working load and overload consistent with the intent expressed in this paragraph.

g. Ground anchors shall be installed so that the load-carrying portion of the anchor in its final working position is below the frost depth (42 inches), and the anchor head shall be at ground level. Total anchor length shall be more than 42 inches as necessary.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

NOTE: When installing ground anchors on private property, installers shall take precautions to ensure that no telephone, electrical, plumbing or water lines are contacted. Utility line locations shall be verified with the property owner or property owner's representative.

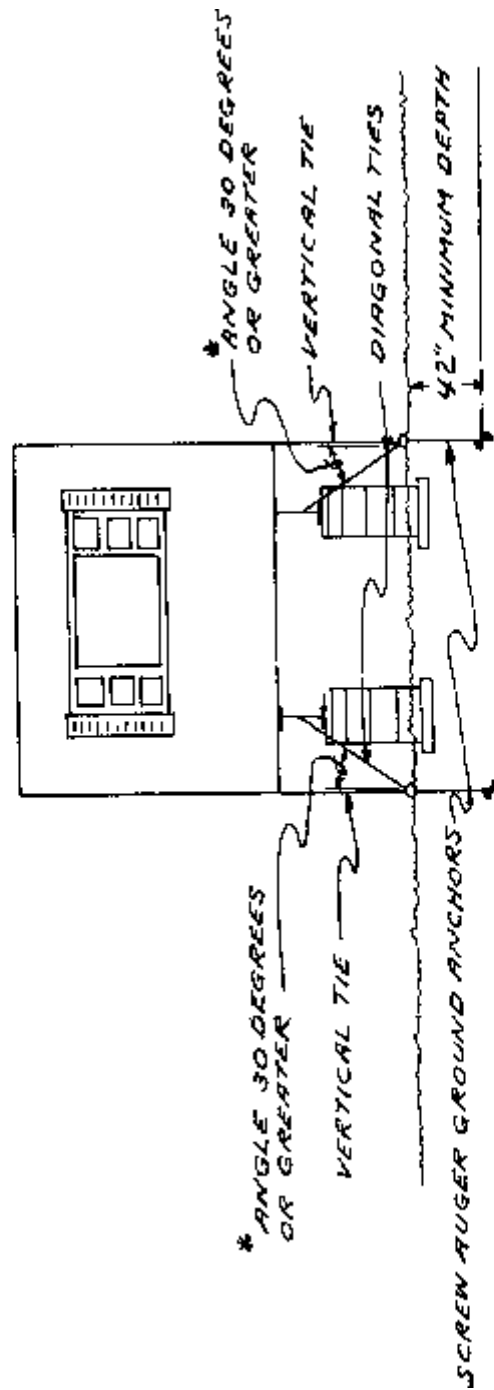
TABLE 6–A
MINIMUM NUMBER OF TIEDOWNS
REQUIRED FOR SINGLEWIDE MOBILE HOMES

MOBILE HOME BOX LENGTH NOT EXCEEDING	MINIMUM NUMBER OF TIEDOWNS PER SIDE	
	DIAGONAL TIES	VERTICAL TIES*
40'–0"	3	2
54'–0"	3	2
73'–0"	4	2
84'–0"	5	2

*If more than the minimum number of vertical or diagonal ties have been supplied, they shall all be used.

NOTES:

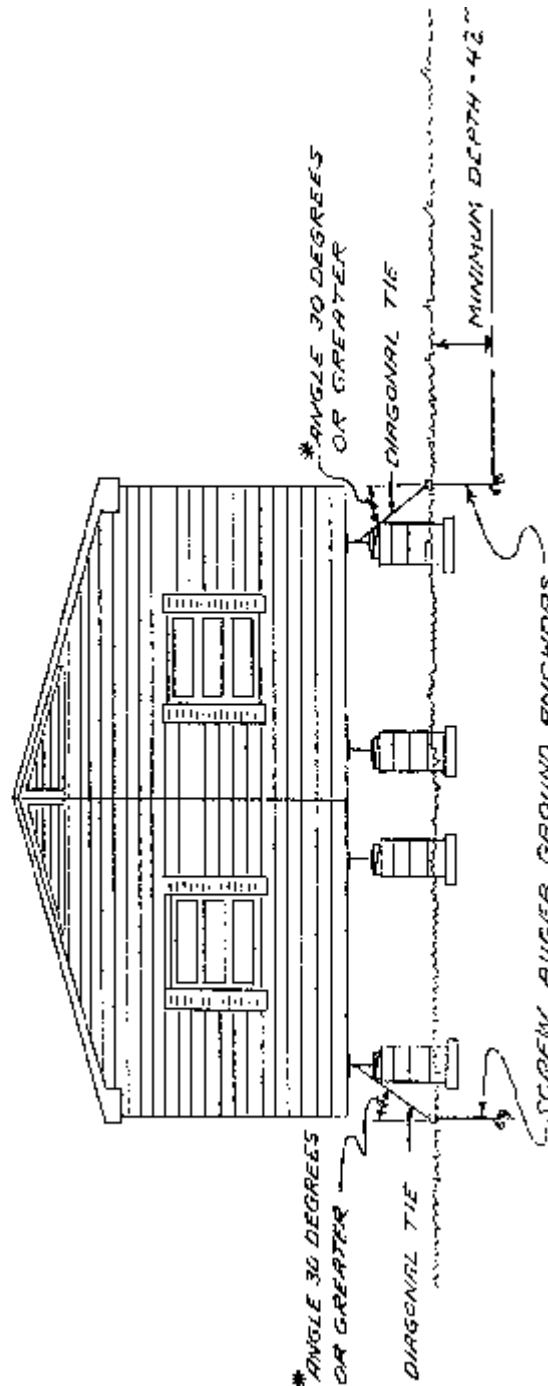
1. Doublewide mobile homes shall comply with Table 6–A except that no vertical ties are required.
2. Wherever a vertical tie and a diagonal tie lie in a plane that is vertical and transverse to the main longitudinal beam, both ties may be connected to the same ground anchor, providing that particular anchor withstands both loadings.
3. This table shall be used only if there are no manufacturer's approved installation requirements.

FIGURE AMOBILE HOME TIEDOWN

* DIAGONAL TIE SHALL DEVIATE FROM A VERTICAL DIRECTION 30 DEGREES OR MORE.

FIGURE 5DOUBLE WIDE MOBILE HOME TIEDOWN

* DIAGONAL TIE SHALL DEVIATE FROM A VERTICAL DIRECTION
30 DEGREES OR MORE.



661—322.12 to 322.19 Reserved.

661—322.20(103A) Fees.

322.20(1) All remittances of fees shall be made by check or money order payable to Iowa Department of Public Safety — Building Code Bureau. Fees shall be remitted to the Building Code Bureau, Fire Marshal Division, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319.

322.20(2) The following table sets out the fee schedule for the manufactured home program.

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Installation Seal	\$25
Installation Seal Replacement	\$10
Verification Inspections Requested by Installer or Owner	No Charge
Ground Support and Anchoring System Approval	\$100

These rules are intended to implement Iowa Code section 103A.9.

[Filed Emergency 6/12/08, effective 7/1/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6885B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 300, "State Building Code—Administration," and Chapter 303, "State Building Code—Requirements for Energy Conservation in Construction," Iowa Administrative Code.

The Building Code Commissioner is charged by Iowa Code sections 103A.8 and 103A.8A and Iowa Code Supplement section 103A.10 with adopting requirements for energy conservation in construction. Several significant changes in applicability of these requirements were enacted this year by the Iowa General Assembly in 2008 Iowa Acts, Senate File 517. Previously, energy conservation requirements applied only to new construction. Now, these requirements will apply to all construction projects except for renovation or remodeling of one and two dwelling unit residential buildings. Changes to implement this revision are included in the amendments adopted herein. Additionally, several clarifying editorial changes are incorporated.

Pursuant to Iowa Code section 17A.4(2), the Commissioner finds that notice and public participation prior to the adoption of these amendments are impracticable, as it is desirable that the amendments become effective as soon as practical because the statutory provisions implemented by 2008 Iowa Acts, Senate File 517, are already in effect.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments be made effective on June 15, 2008, after filing with the Administrative Rules Coordinator. These amendments confer a benefit upon the public by making the rules consistent with statutory changes adopted in 2008 Iowa Acts, Senate File 517, which became effective on April 29, 2008.

A Notice of Intended Action, which proposes amendments identical to those adopted in this filing, is published herein as **ARC 6883B**. The Notice of Intended Action will provide for a period of public comment and participation, including a public hearing. This process will culminate in these amendments being adopted through the normal rule-making process, with any public input received during the comment period having been taken into account.

These amendments are intended to implement Iowa Code sections 103A.8 and 103A.8A and Iowa Code Supplement section 103A.10 as amended by 2008 Iowa Acts, Senate File 517.

These amendments became effective on June 15, 2008.

The following amendments are adopted.

ITEM 1. Adopt the following **new** paragraph **300.4(1)"n"**:

n. Any submission to the commissioner of architectural technical submissions, engineering documents, or plans and specifications for construction, except for plans to renovate or remodel residential buildings of one or two units, shall include a statement that the construction will comply with all applicable energy conservation requirements.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 2. Adopt the following **new** subrule 300.6(4):

300.6(4) Statement of compliance with energy conservation requirements. Any application for a building permit, except for applications to renovate or remodel residential buildings of one or two units, shall include a statement that the construction will comply with all applicable energy conservation requirements.

ITEM 3. Amend rule 661—303.1(103A) as follows:

661—303.1(103A) Scope and applicability of energy conservation requirements.

303.1(1) Scope. Rules 661—303.1(103A) through 303.3(103A) establish thermal ~~and lighting~~ energy efficiency standards for the design of new buildings and structures or portions thereof, ~~and~~ additions to existing buildings, and renovation and remodeling of existing buildings, except for residential buildings of one or two dwelling units, which provide facilities or shelter are intended primarily for human occupancy or use and which are heated or cooled by regulating their exterior envelopes and selection of their heating, ventilation, and air-conditioning systems, service water heating, electrical distribution and illuminating systems and equipment for the efficient use of energy, and lighting efficiency standards for buildings intended for human occupancy which are lighted.

303.1(2) Applicability. Rules 661—303.1(103A) through 661—303.3(103A) apply to design and construction of buildings which ~~provide facilities or shelter are~~ intended primarily for human occupancy ~~or use~~ throughout the state of Iowa. Any ~~new~~ construction of ~~public buildings; of any building within a jurisdiction which has adopted the state building code, a local building code, or a compilation of requirements for building construction; or any new construction of a building or facility with more than 100,000 cubic feet of enclosed space which is heated or cooled~~ buildings or facilities which are intended for human occupancy and which are heated or cooled is covered, with the exception of renovation and remodeling of residential buildings of one or two dwelling units, which are not covered. Rule 661—303.2(103A) establishes standards for design and construction of ~~low-rise~~ residential buildings of three or fewer stories. Rule 661—303.3(103A) establishes standards for ~~nonresidential~~ design and construction of commercial buildings and ~~high-rise~~ residential design and construction buildings of four or more stories. The occupancy of any building covered by this chapter shall be determined based upon the occupancy definitions in chapter 3 of the International Building Code, 2006 edition.

303.1(3) Review by architect or engineer.

a. *Review required.* The plans and specifications for all buildings to be constructed ~~after January 1, 1978, and~~ which exceed a total volume of 100,000 cubic feet of enclosed space that is heated or cooled shall be reviewed by a registered architect or licensed professional engineer for compliance with applicable energy efficiency standards.

b. *Statement of review.* A statement that a review has been accomplished and that the design is in compliance with the energy efficiency standards shall be signed and sealed by the responsible registered architect or licensed professional engineer. This statement shall be filed with the commissioner ~~or a local building official on the a form furnished approved by the commissioner, prior to construction or the before~~ obtaining ~~of~~ any local permits. The statement shall be filed with the commissioner for any project which is subject to plan review by the building code bureau.

~~c. — Submission fee. Rescinded IAB 11/21/07, effective 1/1/08.~~

~~d. c.~~ *Additional buildings.* If the plans and specifications relating to energy efficiency for a specific structure have been approved, additional buildings may be constructed from those same plans and specifications without need of further approval if construction begins within five years of the date of approval. Alterations of a structure which has been previously approved shall not require a review because of these changes, provided the basic structure remains unchanged and no additional energy is required for heating, cooling or lighting.

~~e. d.~~ *Changes to approved plans.* ~~No~~ Prior to the completion of construction, no changes shall be made to any approved plan or specifications which either decrease or increase the amount of energy used for heating, cooling, or lighting, unless the changes are approved by the responsible registered architect or licensed professional engineer in writing and notice has been filed with the commissioner or a local building official. The commissioner or a local building official shall be notified of any change which is anticipated to decrease

PUBLIC SAFETY DEPARTMENT[661](cont'd)

the amount of energy used. Notification pursuant to this paragraph shall be to the commissioner for any project which is subject to plan review by the building code bureau.

~~f. — Local plan review. The review of plans and specifications for buildings constructed with a volume of less than 100,000 cubic feet of enclosed space which is heated or cooled shall be in accordance with local or other building code requirements pertaining to plan review, as required by Iowa Code section 103A.19.~~

ITEM 4. Rescind rule 661—303.2(103A) and adopt the following **new** rule in lieu thereof:

661—303.2(103A) Residential energy code. The International Energy Conservation Code, 2006 edition, is adopted by reference as the residential energy code of the state of Iowa building code, applicable to residential construction limited to three or fewer stories throughout the state of Iowa, with the following amendments:

1. Delete sections 101, 103, 104, 105, and 106, and all sections contained within each of these.
2. Strike section 403.2.2 and adopt the following new section 403.2.2 in lieu thereof:

403.2.2 Sealing. All ducts, air handlers, filter boxes, and building cavities used as ducts shall be sealed. Joints and seams shall comply with Section M1601.3.1 of the International Residential Code. Air handlers with a manufacturer's designation for an air leakage of no more than 2 percent of the design air flow rate when tested at an air pressure of 1-inch water gauge when all air inlets, air outlets, and condensate drain port(s) are sealed shall be deemed sealed. Air handlers with filter boxes shall be tested with the filter box in place.

3. Delete chapter 5.

ITEM 5. Amend rule 661—303.3(103A) as follows:

661—303.3(103A) Adoption of nonresidential energy code. The International Energy Conservation Code, 2006 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is hereby adopted by reference as the nonresidential energy code of the state building code, applicable to ~~nonresidential commercial construction or high-rise residential construction of four or more stories~~ within the state of Iowa ~~on or after January 1, 2007~~, with the following amendments:

1. Delete sections 101, 103, 104, 105, and 106, and all sections contained within each of these.
2. Delete chapter 4.

~~EXCEPTION: Nonresidential construction which begins prior to April 1, 2007, may comply with rule 661—303.3(103A) as it read prior to January 1, 2007.~~

[Filed Emergency 6/11/08, effective 6/15/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6881B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 103A.56, the Building Code Commissioner hereby adopts new Chapter 374, "Manufactured Housing Installer Certification," Iowa Administrative Code.

Iowa Code chapter 103A, Division IV, assigns responsibility to the Building Code Commissioner for regulation of the installation of manufactured and mobile homes in Iowa. Provisions regarding the standards to be met in the installation of manufactured and mobile homes are adopted as part of the State Building Code, which establishes construction standards. The Building Code Commissioner is also authorized to establish licensing requirements for manufactured home dealers and certification requirements for manufactured housing installers. While rules for this program have been in place since 2000, they are required to be updated to comply with new requirements established by the U.S. Department of Housing and Urban Development. The current rules, which are rescinded in **ARC 6898B** herein, initially had been adopted as part of the State Building Code, but since these rules are not construction standards, the Building Code Commissioner has determined that they more appropriately should be adopted separately from the

PUBLIC SAFETY DEPARTMENT[661](cont'd)

State Building Code and should be placed in a separate chapter of the administrative rules. This new chapter contains solely the rules for certification of manufactured housing installers.

Pursuant to Iowa Code section 17A.4(2), the Commissioner finds that notice and public participation prior to the adoption of these rules are impracticable, as it is essential that the new requirements for certification of installers be in effect during the next round of recertification. Currently, annual certifications of installers are due for renewal on July 1.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Commissioner further finds that the normal effective date of these rules, 35 days after publication, should be waived and the rules be made effective July 1, 2008, after filing with the Administrative Rules Coordinator. These rules confer a benefit upon the public by facilitating the orderly issuance of recertification to installers. If the new rules were not in effect on July 1, 2008, certified installers would be required to meet additional requirements during the terms of their next certifications, which would result in significant disruption and confusion.

These rules are also being proposed in a Notice of Intended Action, which is published herein as **ARC 6880B**. The Notice of Intended Action will provide for a period of public comment and participation, including a public hearing. This process will culminate in the adoption of these rules through the normal rule-making process, with any public input received during the comment period having been taken into account.

These rules are intended to implement Iowa Code section 103A.59.

These rules became effective July 1, 2008.

The following amendment is adopted.

Adopt the following new 661—Chapter 374:

CHAPTER 374 MANUFACTURED HOUSING INSTALLER CERTIFICATION

661—374.1(103A) Certification program. There is established in the building code bureau of the fire marshal division a manufactured housing installer certification program. The program may be contacted by E-mail at mhinfo@dps.state.ia.us, by telephone at (515)725-6145, or by mail at the following address:

Manufactured Housing Installer Certification Program

Building Code Bureau

Fire Marshal Division

Iowa Department of Public Safety

215 East 7th Street

Des Moines, Iowa 50319

661—374.2(103A) Certified installer required. There shall be at least one person certified as a manufactured housing installer present at the installation of any manufactured home in Iowa. The installation of a manufactured home shall be under the direct supervision of a certified manufactured housing installer, who shall be present at all times at the installation site while any installation work is proceeding.

EXCEPTION: Installation of a manufactured home may be completed by the owner of the home, if the home is the primary residence of the person completing the work, whether or not the person is certified as a manufactured housing installer, provided that the work is inspected as required and that a state-certified installer certifies compliance with appropriate provisions of this chapter, 661—Chapter 16, and 661—Chapter 322.

661—374.3(103A) Requirements for installer certification. An applicant for certification must meet all of the following requirements:

374.3(1) The applicant must be at least 18 years old.

374.3(2) The applicant must have a minimum of one year of experience in the installation, construction or inspection of manufactured homes. Proof of experience shall be submitted on a notarized affidavit submitted with the application to the commissioner.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

374.3(3) The applicant must successfully complete a minimum of eight hours of training approved by the commissioner. Training shall be based on the manufactured housing installation standards published by the U.S. Department of Housing and Urban Development and material approved by the commissioner.

374.3(4) The applicant must have received a passing grade on an examination approved by the commissioner.

661—374.4(103A) Certification fee. The certification fee shall be \$300, payable at the time of application, and shall cover certification for three years. Fees shall be remitted in the form of a check or money order, payable to the Iowa Department of Public Safety – Building Code Bureau. The following should be written in the memo portion of the check: “Manufactured Housing Installer Certification.” Applications and fees received after July 1 of any year will cover the remainder of the fiscal year in which they are received and the following two state fiscal years. Applications and fees received prior to July 1 of any year shall cover the period through June 30 of the third year following.

EXCEPTION: If as of June 1, 2009, statutory language regarding fees collected for certification and recertification of manufactured housing installers does not clearly provide that any such fees collected are exempt from reversion to the state treasury pursuant to Iowa Code section 8.33, then all current certificate holders who paid the \$300 fee shall have \$200 of the fee refunded.

661—374.5(103A) Certification period. Installer certifications and recertifications shall be issued for three years and shall expire on June 30 of the third year of the certification period. Certifications and recertifications issued after July 1 shall cover the remainder of the fiscal year in which they are issued and the following two state fiscal years.

EXCEPTION: If as of June 1, 2009, statutory language regarding fees collected for certification and recertification of manufactured housing installers does not clearly provide that any such fees collected are exempt from reversion to the state treasury pursuant to Iowa Code section 8.33, then all current certificates shall be modified to expire after one year rather than three years from their effective dates.

661—374.6(103A) Review of application for certification. Upon receipt of an application for certification or recertification, staff of the building code bureau shall review the application and recommend approval or denial to the building code commissioner. If an application is approved, the certificate shall be issued to the applicant. If an application is denied, the applicant shall be notified and given an explanation of the reason or reasons for denial. Denials of applications by the building code commissioner may be appealed according to the contested case provisions of 661—Chapter 10. An appeal may be filed as a request for contested case proceeding as provided in rule 661—10.304(17A). An appeal must be filed within 30 days of the date of the denial.

661—374.7(103A) Certification renewal and continuing education.

374.7(1) A certification may be renewed if the installer applying for recertification has completed 12 hours of continuing education, approved by the commissioner, during the three-year certification period. Such training shall be submitted to the commissioner for review and approval prior to the date the training is received. Requests for approval shall be submitted on a form supplied by the commissioner, with supporting documentation.

374.7(2) Any installer who has not been recertified by the expiration date of the installer’s certification shall not be allowed to work as an installer until a valid certification is obtained.

374.7(3) Failure to renew a certification within 60 days of its expiration shall require successful completion of an approved examination.

374.7(4) The recertification fee shall be \$300, payable at the time of application. Fees shall be remitted in the form of a check or money order, payable to the Iowa Department of Public Safety – Building Code Bureau. The following shall be written in the memo portion of the check: “Manufactured Housing Installer Certification.” Applications and fees received after July 1 shall cover the remainder of the fiscal year in which they are received and the following two years.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—374.8(103A) Suspension or revocation of certification. An installer certification may be suspended or revoked for cause pursuant to a recommendation by the staff of the building code bureau to the building code commissioner. Suspension or revocation of an installer certification may be appealed subject to the provisions of 661—Chapter 10 for contested case proceedings. An appeal may be filed as a request for contested case proceeding as provided in rule 661—10.304(17A). An appeal must be filed within 30 days of the date of the suspension or revocation.

661—374.9(103A) Civil penalties. In addition to possible suspension or revocation of a certification, a person who violates the rules governing manufactured housing installation may be subject to civil penalties. Civil penalties may be assessed by the building code commissioner based on recommendation from staff of the building code bureau. Assessments of civil penalties may be appealed subject to the provisions of 661—Chapter 10 for contested case proceedings. An appeal may be filed as a request for contested case proceeding as provided in rule 661—10.304(17A). An appeal must be filed within 30 days of the date of the assessment of the civil penalty.

661—374.10(103A) Inspections.

374.10(1) The installation of any manufactured home as defined in Iowa Code section 103A.51 shall be subject to inspection by a representative of the building code bureau.

374.10(2) Any person planning to install a manufactured home shall notify the building code bureau of the person's intent to install a home at least three business days prior to the date of installation.

374.10(3) A manufactured home shall not be occupied until approval has been given by the building code bureau. If the inspection of the home is not completed within the three-business-day notification period, approval may be given by the building code bureau to proceed with the installation.

These rules are intended to implement Iowa Code section 103A.59.

[Filed Emergency 6/11/08, effective 7/1/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6865B

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code Supplement section 35A.5 and 2008 Iowa Acts, Senate File 2425, section 4, subsection 3, the Department of Veterans Affairs hereby amends Chapter 12, "County Grant Program for Veterans," Iowa Administrative Code.

The rules in Chapter 12 are revised to expand usage of the existing grant program and to reflect current legislation that enacts the grant program. Revisions include updates of references to the enacting legislation and removal of outdated language. Furthermore, these amendments provide that grant funds not expended at the end of the fiscal year in which the grant was awarded, funds not spent on services to veterans, and funds that supplant the previous year's expenditures shall be recovered by the State of Iowa. These amendments eliminate the county match requirement and the requirement that counties increase services over and above those provided in the previous year. These amendments were authorized in the enacting legislation.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are contrary to the public interest because of the need to establish the fiscal year 2009 grant program. These amendments establish processes and guidelines that are not present in the existing rules and make changes in accordance with the enacting language that will allow the program to proceed in the new fiscal year.

The Department finds that these amendments confer a benefit upon grant applicants by conforming the rules to newly enacted legislation and by eliminating several restrictive provisions that will allow counties greater flexibility in receiving and spending the grant funds. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

No fiscal impact is anticipated.

These amendments are intended to implement 2008 Iowa Acts, Senate File 2425, section 4, subsection 3.

These amendments became effective on June 10, 2008.

The following amendments are adopted.

Amend 801—Chapter 12 as follows:

CHAPTER 12
COUNTY GRANT PROGRAM FOR VETERANS

801—12.1(82GA, ~~HF909~~ SF2425) Purpose. ~~2007 Iowa Acts, House File 909, section 4, subsection 4~~ 2008 Iowa Acts, Senate File 2425, section 4, subsection 3, enacts the county grant program for veterans. The purpose and legislative intent of this grant program is to improve delivery of services by the various county commissions of veteran affairs to veterans in their respective counties. Grants will be awarded annually to counties pursuant to an appropriation by the general assembly to the Iowa department of veterans affairs to fund this program.

801—12.2(82GA, ~~HF909~~ SF2425) Grant amounts. The Iowa department of veterans affairs shall award grants in amounts up to a maximum of \$10,000 to each county submitting an application that is approved by the department. In order to qualify for a grant, a county must agree to expend ~~an amount of county funds equal to~~ the amount of the approved grant on providing services to living veterans and must agree to maintain its current level of spending. ~~Beginning with the fiscal year 2009 grant program, grant funding will be awarded only for the provision of increased services to veterans over and above the services provided in the previous fiscal year.~~

801—12.3(82GA, ~~HF909~~ SF2425) Application procedure. Counties that wish to apply for a grant shall submit an application provided by the department to the Iowa Department of Veterans Affairs, Camp Dodge, Building A6A, 7105 NW 70th Avenue, Johnston, Iowa 50131. Applications will be accepted up to May 15 of each year for a June 1 approval. Applications received after May 15 will be approved strictly on an emergency basis in cases in which the applying county has an identified need and distributed funds will be expended before the end of the fiscal year. Once the grant funding appropriated by the general assembly has been expended, the department will compile a list of grant applications, based on the date of receipt, for future approval if supplemental funding is provided. The application shall contain the following:

12.3(1) Application summary. The application summary shall consist of a brief description of the proposed project and the signatures of a member of the board of supervisors and a member of the county veteran affairs commission.

12.3(2) Narrative. The narrative shall explain the proposed project for which the funds will be used. The narrative must address the assessment factors listed in rule 801—12.4(82GA, ~~HF909~~ SF2425). The assessment factors may be addressed in any sequence that is logical for the proposed project, but all factors should be identified and addressed. Any factors that are not addressed in the application may result in a reduced opportunity for funding of the project.

12.3(3) Proposed budget. The budget for the project shall be developed for the fiscal year in which the grant will be received. ~~Funds carried forward from the fiscal year 2007 grant program shall be included in the fiscal year 2008 proposed budget.~~ Beginning with the fiscal year 2008 grant program, recipients must expend grant funds during the fiscal year in which the grant was received. Funding for subsequent years shall be dependent upon future legislative appropriations. Beginning with the fiscal year 2009 grant program, grants may be awarded to supplement county spending on veterans affairs, but shall not supplant the previous year's expenditures. County maintenance of effort will be required, and the application should include the county commission of veteran affairs' budget and actual spending for the previous fiscal year, along with the proposed budget for the fiscal year in which the grant application is being made. Grant funding received from the Iowa department of veterans affairs shall not be included in the county's previous fiscal year expenditures for maintenance of effort purposes. For example, a county with a commission of veteran affairs budget of

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

\$20,000 and actual expenditures of \$17,000 in fiscal year 2008 will be required to spend \$17,000 in fiscal year 2009 in order to meet the maintenance of effort requirement.

12.3(4) *Letters of intent.* If the proposed project involves additional funding from other sources, letters of intent to support the project are required from those additional sources.

801—12.4(82GA,~~HF909~~ SF2425) *Assessment of applications.* The Iowa department of veterans affairs will make decisions on applications based upon the following factors:

12.4(1) *Need.* The needs of the local veteran population that currently are not being addressed or that are not being addressed adequately are clearly identified.

12.4(2) *Goals.* The goals of the project are clearly outlined, and the sources of the services to be provided are clearly identified.

12.4(3) *Results.* A tentative time line for the delivery of the proposed services is included along with clearly identified quantitative measurements that will be used to determine the success of the grant in addressing the identified needs.

12.4(4) *Innovation.* The project addresses the implementation of new practices and methods for addressing the needs of the veteran community and improvement of delivery of services.

12.4(5) *Accountability and project monitoring.* The application demonstrates financial accountability and provides mechanisms to ensure proper evaluation of the project.

801—12.5(82GA,~~HF909~~ SF2425) *Application decision.* The director of the Iowa department of veterans affairs shall notify each county that submits an application of the department's decision regarding the county's application. An explanation of the reasons for the rejection of a project application and suggestions for improvement shall accompany application denials.

801—12.6(82GA,~~HF909~~ SF2425) *Grant agreement.* Each county that is awarded a grant will be required to enter into an agreement with the Iowa department of veterans affairs that specifies the reporting requirements. A written report shall be submitted to the department and shall be due 30 days following the end of the fiscal year in which the grant was received. The report shall provide an assessment of the project, including measurable outcomes such as increased opportunities to publicize veterans' benefits, the number of outreach visits conducted to allow veterans to apply for benefits, the number of applications for benefits filed as a direct result of the project, and increased opportunities for veteran involvement in local veterans' organizations. The report should also contain a final report on county spending for the fiscal year in which the grant was awarded.

801—12.7(82GA,~~HF909~~ SF2425) *Appeals.* Applicants that are dissatisfied with the decision of the Iowa department of veterans affairs may file an appeal with the Iowa commission of veterans affairs. The written appeal must be received within 15 working days of the date of the notice of decision; must be based on a contention that the process was conducted outside of statutory authority, violated state or federal law, policy or rules, did not provide adequate public notice, was altered without adequate public notice, or involved conflicts of interest by staff; and must include a request that the commission review the decision and the reasons for the appeal.

The Iowa commission of veterans affairs shall review the appeal at its next regularly scheduled meeting and shall issue a final decision.

801—12.8(82GA,SF2425) *Recovery of funds.* The treasurer of the state of Iowa shall be the entity charged with the recovery of grant funding from counties in the following circumstances:

12.8(1) *Unspent funds.* Counties not expending the entire amount of the grant by the end of the fiscal year in which the grant was received will be required to return the unspent portion to the state of Iowa.

12.8(2) *Unauthorized use.* Counties expending a portion of the grant on items that do not provide services to living veterans, or the immediate family of a veteran, will be required to return the unauthorized funds to the state of Iowa.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

12.8(3) Maintenance of effort. Counties not maintaining their previous fiscal year's spending levels will have been seen as supplanting county funding with state grant funds. Counties not complying with their maintenance of effort will be required to return the supplanted portion to the state of Iowa.

These rules are intended to implement 2007 Iowa Acts, House File 909, section 4, subsection 4 2008 Iowa Acts, Senate File 2425, section 4, subsection 3.

[Filed Emergency 6/10/08, effective 6/10/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6882B

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 35A.5, the Department of Veterans Affairs hereby amends Chapter 13, "Vietnam Conflict Veterans Bonus," Iowa Administrative Code.

The rules in Chapter 13 are amended to expand availability of the Vietnam Conflict veterans bonus program to veterans who served at least 120 days on active duty service, and for a period of time between July 1, 1973, and May 31, 1975.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are contrary to the public interest because of the need to implement this technical change authorized in legislation that provides an added benefit to veterans who have had their bonus payments deferred since the beginning of Fiscal Year 2008.

The Department finds that these amendments confer a benefit upon certain bonus applicants by conforming the Chapter 13 rules to 2008 Iowa Acts, House File 2700, that eliminates a restrictive provision thus allowing applicants who served less than 120 days between July 1, 1973, and May 31, 1975, but who served at least 120 days on active duty at one time to receive their bonus. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

No fiscal impact is anticipated.

These amendments are intended to implement Iowa Code Supplement section 35A.8(5) as amended by 2008 Iowa Acts, House File 2700, section 36.

These amendments became effective on June 11, 2008.

The following amendments are adopted.

ITEM 1. Amend **801—Chapter 13**, parenthetical implementation statute, as follows:

~~(82GA, SF578 35A)~~

ITEM 2. Amend subrule 13.1(1) as follows:

13.1(1) Service requirement. A person serving in the Vietnam service area is a person who served on active duty for not less than 120 days in the armed forces of the United States, and who served at any time between July 1, 1973, and May 31, 1975, both dates inclusive, and who at the time of entering into active duty service was a legal resident of the state of Iowa, and who had maintained the person's residence in this state for a period of at least six months immediately before entering into active duty service, and was honorably discharged or separated from active duty service, or is still in active service in an honorable status, or has been retired, or has been furloughed to a reserve, or has been placed on inactive status and was on active duty service in the Vietnam service area, within the dates specified in this subrule, if the veteran earned either a Vietnam service medal or an armed forces expeditionary medal Vietnam or can otherwise establish service in the Vietnam service area during that period.

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ITEM 3. Amend **801—Chapter 13**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, Senate File 578~~ Iowa Code Supplement section 35A.8(5) as amended by 2008 Iowa Acts, House File 2700, section 36.

[Filed Emergency 6/11/08, effective 6/11/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6875B

WORKERS' COMPENSATION DIVISION[876]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 8, "Substantive and Interpretive Rules," Iowa Administrative Code.

This amendment updates references to the tables which determine payroll taxes.

In compliance with Iowa Code section 17A.4(2), the Workers' Compensation Commissioner finds that notice and public participation are unnecessary. Rule 876—8.8(85,17A) is noncontroversial and, further, Iowa Code section 85.61(6) requires adoption of current tables to determine payroll taxes by July 1 of each year. The Division must wait until the Internal Revenue Service and the Iowa Department of Revenue determine whether there will be changes in their publications on July 1 of the current year.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 2008, as it confers a benefit upon the public to ensure speedy and uniform compliance with the Division's legislative mandate.

The Division has determined that this amendment will not necessitate additional annual expenditures exceeding \$100,000 or combined expenditures exceeding \$500,000 within five years by all affected persons, including the agency. Therefore, no fiscal impact statement accompanies this rule making.

The Division has determined that this amendment will have no impact on small business within the meaning of Iowa Code section 17A.4A.

This amendment does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

This amendment is intended to implement Iowa Code section 85.61(6).

This amendment became effective on July 1, 2008.

The following amendment is adopted.

Amend rule 876—8.8(85,17A) as follows:

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, ~~2007~~ 2008, through June 30, ~~2008~~ 2009, are the tables in effect on July 1, ~~2007~~ 2008, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [~~Rev. January 2007~~ 2008].)

2. Iowa Withholding Tax Guide. (Iowa Department of Revenue Iowa Withholding Tax Rate Tables; [Effective April 1, 2006].)

3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [~~Rev. January 2007~~ 2008].)

This rule is intended to implement Iowa Code section 85.61(6).

[Filed Emergency 6/10/08, effective 7/1/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6899B

ELDER AFFAIRS DEPARTMENT[321]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby adopts amendments to Chapter 4, "Department Planning Responsibilities," Iowa Administrative Code.

The adopted amendments clarify the waiver and contested case procedures for Area Agencies on Aging (AAA) and add a severability clause to the chapter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 26, 2008, as **ARC 6672B**.

The public comment period on this Notice ended April 16, 2008. No comments were received. These amendments are identical to those published under Notice.

The Commission adopted these amendments during their regularly scheduled meeting on June 11, 2008.

These amendments are intended to implement Iowa Code chapter 231.

These amendments will become effective August 6, 2008.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [4.3(8), 4.6(1), 4.7, 4.9(3), 4.11(2), 4.14] is being omitted. These amendments are identical to those published under Notice as **ARC 6672B**, IAB 3/26/08.

[Filed 6/12/08, effective 8/6/08]

[Published 7/2/08]

[For replacement pages for IAC, see IAC Supplement 7/2/08.]

ARC 6907B

ELDER AFFAIRS DEPARTMENT[321]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby adopts amendments to Chapter 6, "Area Agency on Aging Planning and Administration," Iowa Administrative Code.

The adopted amendments:

1. Require nonprofit contractors or subgrantees to comply with all requirements for nonprofit entities, which would include Iowa Code chapter 504;
2. Clarify the waiver requirements regarding funding and area plans; and
3. Add a severability clause to the chapter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 26, 2008, as **ARC 6674B**.

The public comment period on this Notice ended April 16, 2008. No comments were received. These amendments are identical to those published under Notice.

The Commission adopted these amendments during their regularly scheduled meeting on June 11, 2008.

These amendments are intended to implement Iowa Code chapter 231.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

These amendments will become effective August 6, 2008.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [6.10(4), 6.15(1), 6.18] is being omitted. These amendments are identical to those published under Notice as **ARC 6674B**, IAB 3/26/08.

[Filed 6/12/08, effective 8/6/08]

[Published 7/2/08]

[For replacement pages for IAC, see IAC Supplement 7/2/08.]

ARC 6896B

ELDER AFFAIRS DEPARTMENT[321]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby rescinds Chapter 9, "Resident Advocate Committees," Iowa Administrative Code, and adopts a new Chapter 9 with the same title.

The new chapter changes the processes for membership on resident advocate committees, requires committee members to be trained on a regular basis, removes language that has not been utilized for several years, and includes a severability clause.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 7, 2008, as **ARC 6789B**.

The public comment period on this Notice ended May 27, 2008. Two comments were received from the public. No changes were made as a result of these comments. These rules are identical to those published under Notice.

The Commission adopted these rules during their regularly scheduled meeting on June 10, 2008.

These rules are intended to implement Iowa Code section 231.44.

These rules will become effective August 6, 2008.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 9] is being omitted. These rules are identical to those published under Notice as **ARC 6789B**, IAB 5/7/08.

[Filed 6/12/08, effective 8/6/08]

[Published 7/2/08]

[For replacement pages for IAC, see IAC Supplement 7/2/08.]

ARC 6908B

ELDER AFFAIRS DEPARTMENT[321]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby adopts amendments to Chapter 21, "Case Management Program for Frail Elders," Iowa Administrative Code.

The adopted amendments:

1. Replace the words "client," "clients" and "client's" with the words "consumer," "consumers" and "consumer's" throughout the chapter;
2. Clarify the assessment, eligibility and service plan requirements for consumers;
3. Establish requirements for addressing conflicts of interest in the case management program for frail elders; and
4. Add a severability clause to the chapter.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 26, 2008, as **ARC 6673B**.

The public comment period on this Notice ended April 16, 2008. No comments were received. These amendments are identical to those published under Notice.

The Commission adopted these amendments during their regularly scheduled meeting on June 11, 2008. These amendments will become effective August 6, 2008.

These amendments are intended to implement Iowa Code chapter 231.

The following amendments are adopted.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 21] is being omitted. These amendments are identical to those published under Notice as **ARC 6673B**, IAB 3/26/08.

[Filed 6/12/08, effective 8/6/08]

[Published 7/2/08]

[For replacement pages for IAC, see IAC Supplement 7/2/08.]

ARC 6891B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.105(3), the Environmental Protection Commission hereby amends Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

The amendments to paragraph 64.16(3)"a" increase the fees for authorizations issued under the general permits for storm water discharges. The fee increases are necessary as the demands upon the storm water fees have exceeded the amount collected for the last several years. Also, the requirement that coverage provided by the multiyear (3-, 4- and 5-year) fees expire no later than the general permit under which the coverage was issued is being removed to provide consistency with the amended requirements in the recently reissued general permits.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 2, 2008, as **ARC 6521B**. Comments regarding these amendments were received during the comment period and at the public hearing on January 24, 2008. The comments and the Department's response are contained in the responsiveness summary, which can be obtained by telephoning Joe Griffin at (515)281-7017. There are no changes from the Notice of Intended Action resulting from the public comments.

These amendments are intended to implement Iowa Code chapter 455B, division I.

These amendments will become effective August 6, 2008.

The following amendments are adopted.

Amend paragraph **64.16(3)"a"** as follows:

a. For coverage under the NPDES general permits, the following fees apply:

(1) Storm Water Discharges Associated with Industrial Activity, NPDES General Permit No. 1.

Annual Permit Fee ~~\$150~~ 175(per year)

or

Five-year Permit Fee	\$600 <u>700</u>
Four-year Permit Fee	\$450 <u>525</u>
Three-year Permit Fee	\$300 <u>350</u>

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~~(Coverage provided by the five year, four year, and three year permit fees expires no later than the expiration date of the general permit. Maximum coverage is five years, four years, and three years, respectively.)~~ All fees are to be submitted with the Notice of Intent for coverage under the general permit.

(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, and Rock Crushing Plants, NPDES General Permit No. 3. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(4) Discharge from Onsite Wastewater Treatment and Disposal Systems, NPDES Permit No. 4. No fees shall be assessed.

(5) Discharge from Mining and Processing Facilities, NPDES General Permit No. 5. Fees as established in 2006 Iowa Acts, House File 2540, section 25, are to be submitted by August 30 of every year unless a multiyear fee payment was received in an earlier year. New facilities seeking General Permit No. 5 coverage in any month but August shall submit fees with the Notice of Intent for coverage. Coverage provided by the five-year, four-year, or three-year permit fees expires no later than the expiration date of the general permit. Maximum coverage is five years, four years, and three years, respectively. In the event a facility is no longer eligible to be covered under General Permit No. 5, the remainder of the fees previously paid by the facility shall be applied toward its individual permit fees.

[Filed 6/12/08, effective 8/6/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6892B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission hereby adopts amendments to Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

Notice of Intended Action was published as **ARC 6596B** in the February 13, 2008, issue of the Iowa Administrative Bulletin.

Chapter 135 defines the risk-based corrective action (RBCA) assessment process for underground storage tank releases. Sites are classified as high risk, low risk, and no further action based on this RBCA assessment process. A three-tiered process is used to evaluate risk. At Tier 1, a site may be classified without soil and groundwater plumes being defined. Tier 2 requires the vertical and horizontal extent of soil and groundwater plumes to be defined and uses a model to predict the maximum horizontal extent of groundwater movement. Tier 3 allows the use of alternative and more site-specific assessment tools to classify risk.

Since 1996, a two-dimensional model has been used in RBCA to evaluate and predict the risk of groundwater contamination migrating horizontally and impacting a receptor such as a drinking water well. If a receptor falls within the actual groundwater plume or within the modeled plume, then the receptor is presumed to be at risk of impact. If a receptor falls outside both plumes, it is not considered to be at risk.

There has been a perception that the length of plumes generated by the current Tier 2 groundwater model (Appendix B-1 old model) may significantly overestimate the horizontal length of actual groundwater contamination plumes. Therefore, after ten years of use, a decision was made to recalibrate the model to better fit actual data. The Iowa Department of Natural Resources (Department) formed a technical advisory group to work on recalibrating the model based on observations made during the first decade of use. The revised Tier 2 software model (Appendix B revised model) found in these amendments is the result of the work of this technical advisory group.

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The Tier 2 model is used to predict horizontal movement to a concentration, termed a “target level,” such as 5 parts per billion (ppb) benzene. The revised model results in shrinking the modeled plume size. For example, in the old model the average projected benzene groundwater plume (5 ppb) was 8.6 times larger than the actual plume. With the revised model, the average projected benzene groundwater plume (5 ppb) is only 2.6 times larger. It is important to realize these are only averages, which means that in some cases, the revised model may predict movement less than 2.5 times the actual plume and sometimes greater than 2.5 times. In addition, the Tier 2 groundwater transport model, old or revised, only predicts the horizontal movement of the groundwater, and data collected for the modeling is generally from surficial water table monitoring points. It does not evaluate the potential vertical movement of the contaminants in the aquifer or the influence of pumping wells on the groundwater movement.

These amendments substitute the revised model into the existing rule structure. The amendments provide a transition policy and procedures which give owners and operators the option of electing to continue evaluating a site under the revised or the old model.

Because the recalibrated modeled plume may in some cases be significantly smaller than the previously modeled plumes and because the model does not sufficiently evaluate the vertical movement and the influence of pumping wells, the amendments proposed in the Notice of Intended Action included some special procedures, in addition to the revised model, for evaluating the risk to public water supply wells when the well falls outside the modeled plume but may still be at risk due to vertical movement of the groundwater and the pumping influence of the wells. Under the adopted rules, a public water supply well risk assessment is triggered if a public water supply well is located within 2,500 feet of an underground storage tank source area and would only apply to RBCA assessments of new releases or to the optional reevaluation of old release sites using the revised model. The adopted rules rely on groundwater professionals to conduct a risk analysis based on available information and to submit to the Department a recommendation based on their professional judgment as to the potential risk of impact to a public water supply well from the leaking underground storage tank release. If the Department agrees with the groundwater professional's recommendation that it is unlikely the well is at risk of impact, the Department may classify the well as “no action required.” If the Department disagrees with the recommendation, the Department then has the burden to establish a sufficient basis to show that the public water supply well is, more likely than not, at risk. In that case, the owner and operator are responsible for submitting a Tier 3 work plan to further assess risk to the well.

Three public hearings were held on March 4, 5, and 6, 2008, to receive comments on the Notice of Intended Action. In addition, representatives of the Department appeared before the Administrative Rules Review Committee (ARRC) on March 7, 2008, and again on May 13, 2008. At the March ARRC meeting to discuss the Noticed revisions to Chapter 135, the ARRC requested and the Department and present stakeholders agreed to reconvene with other stakeholders and continue to try to resolve differences regarding these amendments. The ARRC also requested and the Department agreed to conduct what was referred to as an informal regulatory analysis consistent with the provision in Iowa Code section 17A.4A.

The Department conducted seven meetings between the March and May ARRC meetings to receive additional stakeholder and public input on these amendments. The Department formed a core stakeholder group that consisted of representatives from the Iowa UST Fund, the Petroleum Marketers Management Insurance Company (PMMIC), Petroleum Marketers and Convenience Stores of Iowa (PMCI), Groundwater Professionals of Iowa, the Iowa Association of Water Agencies (IAWA), and the Department. The amendments in their current form were written after these additional stakeholder meetings and were presented at the May ARRC meeting along with the informal regulatory analysis.

Comments on the amendments were received during the public comment period and at both of the ARRC meetings. Based on comments received, the most controversial part of the amendments is the new requirement for the special assessment procedures for public water supply well receptors.

Comments in opposition to the special assessment procedures for public water supply wells were received from the Comprehensive Petroleum Underground Storage Tank Fund Board and the regulated community including PMCI, PMMIC, Casey's General Stores, and Krause Gentle Corporation. The comments in opposition generally related to the assertion that the recalibrated Tier 2 model is adequate for assessing risk

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to pumping wells and, therefore, the special procedures for assessment of risk to public water supply wells are unnecessary and overly burdensome, and may result in excessive assessment costs.

Comments supporting the special procedures for public water supply well risk evaluation were received from the City of Sioux City, Atlantic Municipal Utilities, Iowa Rural Water Association, Iowa League of Cities, and the Iowa Association of Water Agencies. Those commenting in support of the special procedures for assessing risk to public water supply wells generally agreed that information on the susceptibility of the well aquifer and the predicted capture zone of the well should be considered when evaluating risk to the well from the underground storage tank release and that performance of the special assessment procedures provides necessary and added protection for public water supplies.

The Notice of Intended Action contained discretionary language which would have granted the Department reservation authority to require a risk assessment for receptors which fall outside of the modeled plumes other than public water supply wells, including but not limited to private drinking water wells and enclosed spaces. This provision was omitted from the adopted amendments due to concerns by stakeholders that the reservation of authority was too broad. However, the Department believes it may have the authority on a case-by-case basis to require risk assessment or corrective action for receptors outside of the modeled plume if there is an imminent risk or hazardous condition.

The Department will review the public water supply risk assessment procedure at least two years after adoption, if there is a request made by stakeholders. The expectation is that after two years all stakeholders will have a better understanding of this policy and procedure.

The amendments contain other less controversial policy changes including incorporating into rule some current practices. For example, the Department conducted an extensive business improvement process with stakeholders which resulted in developing a process by which all interested parties come together for a meeting in person or by telephone conference to discuss all outstanding issues and try to reach consensus on a plan to move a site into remediation or some alternative track to regulatory closure. This practice is incorporated into this rule making; the amendments clarify that failure of an owner/operator to comply with the terms of the memorandum of agreement would be considered a violation of the rules and subject to enforcement. The amendments also require sampling for chemicals of concern of all drinking and non-drinking water wells within 100 feet of the actual groundwater plume.

A copy of the comments and the Department's response can be requested by contacting Tammy VanderBloemen, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319; telephone (515)281-8957; or E-mail tammy.vander_bloemen@dnr.iowa.gov.

These amendments are intended to implement Iowa Code section 455B.474.

These amendments shall become effective August 6, 2008.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **567—135.2(455B)**:

“Corrective action meeting process” means a series of meetings organized by department staff with owners or operators and other interested parties such as certified groundwater professionals, funding source representatives, and affected property owners. The purpose of the meeting process is to develop and agree on a corrective action plan and the terms for implementation of the plan.

“Corrective action plan” means a plan which specifies the corrective action to be undertaken by the owner or operator in order to comply with requirements in this chapter and which is incorporated into a memorandum of agreement or other written agreement between the department and the owner or operator. The plan may include but is not limited to provisions for additional site assessment, site monitoring, Tier 2 revisions, Tier 3 assessment, excavation, and other soil and groundwater remedial action.

“Memorandum of agreement” means a written agreement between the department and the owner or operator which specifies the corrective action that will be undertaken by the owner or operator in order to comply with requirements in this chapter and the terms for implementation of the plan. The plan may include but is not limited to provisions for additional site assessment, site monitoring, Tier 2 revisions, Tier 3 assessment, excavation, and other soil and groundwater remedial action.

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“Public water supply well” means a well connected to a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

“Sensitive area” means a screening tool used to determine if a public water supply well warrants a more in-depth assessment. It is not intended to be a mechanism to assign a risk classification to the public water supply well receptor. “Sensitive area” describes the area within the Iowa Geological Survey’s designated five-year capture zone for any public water supply well or, if the Iowa Geological Survey has not designated a five-year capture zone for a public water supply well, the area within a 2,500-foot radius of the public water supply well and where the Iowa Geological Survey has given the public water supply well aquifer a source water protection aquifer designation of “susceptible” or “highly susceptible.”

ITEM 2. Adopt the following new paragraph **135.8(1)“d”**:

d. Notification. Whenever the department requires a tiered site assessment and a public water supply well is within 2,500 feet of a leaking underground storage tank site, the department will notify the public water supply operator.

ITEM 3. Adopt the following new paragraph **135.9(4)“f”**:

f. Receptor evaluation for public water supply wells. If a public water supply well is located within 2,500 feet of the underground storage tank source area, a Tier 2 assessment must be completed for this pathway in accordance with 135.10(455B), unless the department agrees with the recommendation of the owner or operator’s groundwater professional that it is unlikely the public water supply well is at risk, even without the benefit of soil and groundwater plume definition and a Tier 2 pathway assessment. The groundwater professional may take into account the factors specified in 135.10(11)“h.”

ITEM 4. Amend subrule 135.10(4) as follows:

135.10(4) Groundwater ingestion pathway assessment.

a. Pathway completeness. Unless cleared at Tier 1, this pathway is complete and must be evaluated under any of the following conditions: (1) the first encountered groundwater is a protected groundwater source; or (2) there is a drinking water well or a non-drinking water well within the modeled groundwater plume or the actual plume as provided in 135.10(2)“j” and 135.10(2)“k.” A public water supply screening and risk assessment must be conducted in accordance with 135.10(4)“f” for this pathway.

b. Receptor evaluation. All drinking and non-drinking water wells located within 100 feet of the largest actual plume (defined to the appropriate target level for the receptor type) must be tested, at a minimum, for chemicals of concern as part of the receptor evaluation. Actual plumes refer to groundwater plumes for all chemicals of concern. Untreated or raw water must be collected for analysis unless it is determined to be infeasible or impracticable. The certified groundwater professional or the department may request additional sampling of drinking water wells and non-drinking water wells as part of its evaluation.

All existing drinking water wells and non-drinking water wells within the modeled plume or the actual plume as provided in paragraph “a” must be evaluated as actual receptors. Potential receptors only exist if the groundwater is a protected groundwater source. Potential receptor points of exposure are those points within the modeled plume or actual plume that exceed the potential point of exposure target level. The point(s) of compliance for actual receptor(s) is the receptor. The point(s) of compliance for potential receptor(s) is the potential receptor point of exposure as provided in 135.10(2)“j” and 135.10(2)“k.”

c. and d. No change.

e. Modeling. At Tier 2, the groundwater well located within the modeled plume is assumed to be drawing from the contaminated aquifer, and the groundwater transport model is designed to predict horizontal movement to the well. If the groundwater professional determines that assessment of the vertical movement of contamination is advisable to determine the potential or actual impact to the well source, a Tier 3 assessment of this vertical pathway may be conducted. The groundwater professional shall submit a work plan to the department specifying the assessment methods and objectives for approval in accordance with 135.11(455B). Factors which should be addressed include, but are not limited to, well depth and construction, radius of influence, hydrogeologic separation of aquifer, preferential pathways, and differing water quality characteristics.

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f. ~~Public water supply well assessment.~~ The groundwater professional shall identify all public water supply wells located outside the applicable modeled plume but within 2,500 feet of the leaking underground storage tank site. The certified groundwater professional shall conduct a preliminary assessment of the potential risk of impact from the underground storage tank release to the public water supply well based on available information and taking into account the assessment factors in 135.10(11)"h" and other relevant considerations. The certified groundwater professional shall submit a public water supply well risk assessment report either prior to or along with the Tier 2 site cleanup report. The risk assessment shall, at a minimum, provide an analysis of the potential risk of impact from the underground storage tank site release to the public water supply well and a recommendation as to whether it is unlikely the underground storage tank release poses an unreasonable risk of impact to the well. If the groundwater professional determines that a professional judgment cannot reasonably be offered without collection of further data, the report shall make a recommendation as to what further data might be developed to assess the risk to the well.

~~f. g.~~ ~~Plume definition.~~ The groundwater plume shall be defined to the applicable Tier 1 level for actual receptors except, where there are no actual receptors and the groundwater is a protected groundwater source, the plume shall be defined to the Tier 1 level for potential receptors.

~~g. h.~~ ~~Pathway classification.~~ This pathway shall be classified as high risk, low risk or no action required in accordance with 135.12(455B).

~~h. i.~~ ~~Corrective action response.~~ Corrective action must be conducted in accordance with 135.12(455B). Abandonment and plugging of wells in accordance with 567—~~Chapter~~ Chapter 39 and ~~Chapter~~ Chapter 49 is an acceptable corrective action response.

~~i. j.~~ ~~Use of institutional controls.~~ The use of institutional controls may be used to obtain no action required pathway classification. If the pathway is complete and the concentrations exceed the applicable Tier 1 level(s) for actual receptors, the drinking or non-drinking water well must be properly plugged in accordance with 567—Chapters 39 and 49 and the institutional control must prohibit the use of a protected groundwater source (if one exists) within the actual or modeled plume as provided in 135.10(2)"j" and 135.10(2)"k." If the Tier 1 level is exceeded for potential receptors, the institutional control must prohibit the use of a protected groundwater source within the actual or modeled plume, whichever is greater. If concentrations exceed the Tier 1 level for drinking water wells and the groundwater is a protected groundwater source, the owner or operator must provide notification of the site conditions on a department form to the department water supply section, or if a county has delegated authority, then the designated county authority responsible for issuing private water supply construction permits or regulating non-public water well construction as provided in 567—Chapters 38 and 49.

k. ~~Notification of well owners.~~ Upon receipt of a Tier 2 site cleanup report and as soon as practicable, the department shall notify the owner of any public water supply well identified within the Tier 2 site cleanup report that a leaking underground storage tank site is within 2,500 feet and an assessment has been performed.

ITEM 5. Adopt the following new paragraph 135.10(11)"h":

h. ~~Review of the public water supply receptor risk assessment.~~ The department shall review the public water supply well risk assessment report submitted pursuant to 135.10(4) independently or as part of its review of the Tier 2 site cleanup report. Factors which the department may consider when reviewing the risk assessment report include, but are not limited to:

(1) The location of the underground storage tank site within a sensitive area as defined in 135.2(455B) for any identified public water supply well and if so, the potential risk of impact to the well taking into account the well's capture zone and the aquifer susceptibility designation.

(2) Reports of petroleum constituents in the raw or finished water samples from the public water supply well.

(3) Whether corrective action may be required or has been completed for other receptors or pathways which could prevent impact to the public water supply well.

(4) Test results showing the presence or absence of detectable levels of petroleum constituents in a public water supply well, and to what extent the underground storage tank site release or other facilities in the area may be a source or contributing source.

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(5) The presence of elevated concentrations of chemicals of concern in the soil or groundwater relative to the distance to the public water supply well and groundwater fate and transport data from other contaminated sources in the vicinity.

(6) Available information on the pumping capacity of the public water supply well and related zone of capture.

(7) Detections of chemicals in water samples tending to establish that the integrity of the well has been compromised or that there is a connection between the contaminated aquifer and the well's source water aquifer.

(8) Available information, including hydrogeological data from other sources in the vicinity, as to the nature and extent of any confining layer between the public water supply well aquifer and the contaminated aquifer.

(9) Information supplied from the public water supply well operator including but not limited to well construction, age, integrity, and pumping capacity.

(10) Water quality data and detections of chemicals tending to establish that the integrity of the well has been compromised or that there is a connection between the contaminated aquifer and the public water supply well.

(11) The distance between the leaking underground storage tank site and the public water supply well.

(12) The age of the release.

(13) Alternative modeling including, but not limited to, mass flux modeling.

If the department concurs with the certified groundwater professional's risk analysis and recommendation that it is unlikely the underground storage tank site release poses an unreasonable risk of impact to the public water supply well, the department may classify the well as no action required.

If after taking into account the groundwater professional's risk analysis, professional recommendations and other relevant data, the department does not accept the certified groundwater professional's recommendations, the department must demonstrate that there is a hydrogeological connection between the underground storage tank contaminated aquifer and the public water supply well and that the underground storage tank release more likely than not poses an unreasonable risk of impact to the public water supply well. If the department establishes this level of proof, it may disapprove the assessment report and require the owner and operator through their certified groundwater professional to submit a Tier 3 work plan. The work plan shall propose what further assessment methods and data would be sufficient to confirm the nature and extent of any risk of impact to the public water supply well from the underground storage tank site release. As an alternative to submitting a Tier 3 work plan for this receptor, owners or operators may participate in a corrective action meeting process to develop a Tier 3 work plan or other corrective action plan, which would be incorporated into a memorandum of agreement or other written agreement approved by the department.

ITEM 6. Amend paragraphs **135.12(3)“d”** and **135.12(3)“e”** as follows:

d. A corrective action design report (CADR) must be submitted by a certified groundwater professional for all high risk sites unless the terms of a corrective action plan are formalized in a memorandum of agreement within a reasonable time frame specified by the department. The CADR must be submitted on a form provided by the department and in accordance with department CADR guidance within 60 days of site classification approval as provided in 135.10(11). The CADR must identify at least two principally applicable corrective action options designed to meet the objectives in 135.12(3), an outline of the projected timetable and critical performance benchmarks, and a specific monitoring proposal designed to verify its effectiveness and must provide sufficient supporting documentation consistent with industry standards that the technology is effective to accomplish site-specific objectives. The CADR must contain an analysis of its cost-effectiveness in relation to other options. The department will review the CADR in accordance with 135.12(9).

e. *Interim monitoring.* From the time a Tier 2 site cleanup report is submitted and until the department determines a site is classified as no action required, interim monitoring is required at least annually for all sites classified as high risk. Groundwater samples must be taken: (1) from a monitoring well at the maximum source concentration; (2) from a transition well, meaning a monitoring well with detected levels

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of contamination closest to the leading edge of the groundwater plume as defined to the pathway-specific target level, and between the source(s) and the point(s) of exposure; and (3) from a guard well, meaning a monitoring well between the source(s) and the point(s) of exposure with concentrations below the SSTL line. ~~If concentrations at the point of exposure already exceed the SSTL, the point of exposure must be monitored.~~ If a receptor is located within an actual plume contoured to the applicable target level for that receptor, the point of exposure must be monitored. If concentrations at the receptor already exceed the applicable target level for that receptor, corrective actions must be implemented as soon as practicable. Monitoring conducted as part of remediation or as a condition of establishing a no action required classification may be used to the extent it meets ~~this~~ these criteria. Soil monitoring is required at least annually for all applicable pathways in accordance with 135.12(5)“d.” All drinking water wells and non-drinking water wells within 100 feet of the largest actual plume (defined to the appropriate target level for the receptor type) must be tested annually for chemicals of concern. Actual plumes refer to groundwater plumes for all chemicals of concern.

ITEM 7. Amend paragraphs **135.12(9)“a”** and **135.12(9)“d”** as follows:

a. Owners and operators must submit a corrective action design report (CADR) within 60 days of the date the department approves or is deemed to approve a Tier 2 assessment report under 135.10(11) or a Tier 3 assessment is to be conducted. The department may establish an alternative schedule for submittal. As an alternative to submitting a CADR, owners or operators may participate in a corrective action meeting process to develop a corrective action plan which would be incorporated into a memorandum of agreement or other written agreement approved by the department. Owners or operators shall implement the terms of an approved CADR, memorandum of agreement or other corrective action plan agreement.

d. *Review.* Unless the report proposes to classify the site as no action required, the department must approve the report within 60 days for purposes of completeness or disapprove the report upon a finding of incompleteness, inaccuracy or noncompliance with these rules. If no decision is made within this 60-day period, the report is deemed to be approved for purposes of completeness. The department retains the authority to review the report at any time a no action required site classification is proposed. Owners or operators who fail to implement actions or meet the activity schedule in a memorandum of agreement resulting from a corrective action meeting or other written corrective action plan agreement or who fail to implement the actions or schedule outlined in an approved CADR are subject to legal action.

ITEM 8. Adopt the following **new** subrules 135.18(5), 135.18(6) and 135.18(7):

135.18(5) *Risk-based corrective action assessment reports, corrective action plans, and corrective action design reports accepted before August 6, 2008.* Any owner or operator who had a Tier 2 site cleanup report, Tier 3 report, or corrective action design report approved by the department before August 6, 2008, may elect to submit a Tier 2 site cleanup report using the Appendix B revised model, department-developed software and rules in effect as of August 6, 2008. The owner or operator shall notify the department that the owner and operator wishes to evaluate the leaking underground storage tank site with the Appendix B revised model, software and rules. If the owner or operator so elects, the site shall be assessed, classified, and, if necessary, remediated, in accordance with the rules of the department as of August 6, 2008. If the leaking underground storage tank site is undergoing active remediation, the remediation system shall remain operating until the reevaluation is completed and accepted or as otherwise approved by the department. Once a site has been evaluated using the Appendix B revised model, software and rules in effect as of August 6, 2008, it can no longer be evaluated with the Appendix B-1 old model and software and rules in effect prior to August 6, 2008.

135.18(6) *Risk-based corrective action assessment reports, corrective action plans, and corrective action design reports in the process of preparation with a submittal schedule established prior to August 6, 2008.*

The owner or operator shall notify the department that the owner or operator wishes to use the Appendix B revised model and department software and rules in effect as of August 6, 2008, to evaluate the leaking underground storage tank site before submitting the next report, and prior to expiration of the previously established submittal schedule. Once a site has been evaluated using the Appendix B revised model, software and rules in effect as of August 6, 2008, it can no longer be evaluated with the Appendix B-1 old model, software and rules existing just prior to August 6, 2008.

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135.18(7) *Risk-based corrective action assessment reports, corrective action plans, and corrective action design reports received by the department but not yet reviewed.* The owner or operator will notify the department within 60 days of August 6, 2008, whether the owner or operator is electing to complete a risk-based corrective action assessment using Appendix B revised model, department software and rules effective as of August 6, 2008, or proceeding with the risk-based corrective action assessment using Appendix B-1 old model and department software and rules existing prior to August 6, 2008. Once a site has been evaluated using the Appendix B revised model, software and rules it can no longer be evaluated with the previous Appendix B-1 old model, software and rules.

ITEM 11. Rescind Appendix B in **567—Chapter 135** and adopt the following new Appendix B and Appendix B-1 in lieu thereof:

Appendix B – Tier 2 Equations and Parameter Values (Revised Model)

All Tier 1 equations and parameters apply at Tier 2 except as specified below.

Equation for Tier 2 Groundwater Contaminant Transport Model

Equation (1)

$$C(x) = C_s \exp\left(\frac{x_m}{2\alpha_x} \left[1 - \sqrt{1 + \frac{4\lambda\alpha_x}{u}}\right]\right) \operatorname{erf}\left(\frac{S_w}{4\sqrt{\alpha_y x_m}}\right) \operatorname{erf}\left(\frac{S_d}{4\sqrt{\alpha_z x_m}}\right)$$

Equation (2)

Where $x_m = ax + bx^c$

The value of X_m is computed from Equation (2), where the values for a, b and c in Equation (2) are given in Table 1.

Table 1. Parameter Values for Equation (2)

Chemical	a	b	c
Benzene	1	0.000000227987	3.929438689
Toluene	1	0.000030701	3.133842393
Ethylbenzene	1	0.0001	2.8
Xylenes	1	0.0	0.0
TEH-Diesel	1	0.000000565	3.625804634
TEH-Waste Oil	1	0.000000565	3.625804634
Naphthalene	1	0	0

Variable definitions

x: distance in the x direction downgradient from the source

erf(): the error function

C(x): chemical concentration in groundwater at x

C_s : Source concentration in groundwater (groundwater concentration at x=0)

S_w : width of the source (perpendicular to x)

S_d : vertical thickness of the source

u: groundwater velocity (pore water velocity); $u=Ki/\theta_e$

K: hydraulic conductivity

i: groundwater head gradient

θ_e : effective porosity

λ : first-order decay coefficient, chemical specific

α_x , α_y , α_z : dispersivities in the x, y and z directions, respectively

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For the following lists of parameters, one of three is required: site-specific measurements, defaults or the option of either (which means the default may be used or replaced with a site-specific measurement).

Soil parameters

Parameter		Default Value	Required
ρ_s	soil bulk density	1.86 g/cm ³	option
f_{oc}	fraction organic carbon in the soil	0.01 kg-C/kg-soil	option
θ_T	total soil porosity	0.3cm ³ -voids/cm ³ -soil	option
θ_{as}	volumetric air content in vadose zone	0.2cm ³ -air/cm ³ -soil	default
θ_{ws}	volumetric water content in vadose zone	0.1cm ³ -H ₂ O/cm ³ -soil	default
θ_{acrack}	volumetric air content in foundation/wall cracks	0.2cm ³ -air/cm ³ -soil	default
θ_{wcrack}	volumetric water content in foundation/wall cracks	0.1cm ³ -H ₂ O/cm ³ -soil	default
I	infiltration rate of water through soil	7 cm/year	default

If the total porosity is measured, assume 1/3 is air filled and 2/3 is water filled for determining the water and air fraction in the vadose zone soil and floor cracks.

Groundwater Transport Modeling Parameters

Parameter		Default Value	Required
K	hydraulic conductivity	16060 cm/year	site-specific
i	groundwater head gradient	0.01 cm/cm	site-specific
S_w	width of the source	use procedure specified in 135.10(2)	site-specific
S_d	vertical thickness of the source	3 m	default
α_x	dispersivity in the x direction	0.1x	default
α_y	dispersivity in the y direction	0.33 α_x	default
α_z	dispersivity in the z direction	0.05 α_x	default
θ_e	effective porosity	0.1	default

where $u=Ki/\theta_e$

First-order Decay Coefficients

Chemical	Default Value λ (d ⁻¹)	Required
Benzene	0.000127441	default
Toluene	0.0000208066	default
Ethylbenzene	0.0	default
Xylenes	0.0005	default
Naphthalene	0.00013	default
TEH-Diesel	0.0000554955	default
TEH-Waste Oil	0.0000554955	default

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Other Parameters for Groundwater Vapor to Enclosed Space

Parameter		Default Value	Required
L _{gw}	depth to groundwater from the enclosed space foundation	1 cm	option
L _B	enclosed space volume/infiltration area ratio	200 cm	option
ER (s-1)	enclosed space air exchange rate	0.00014	default
L _{crack}	enclosed space foundation or wall thickness	15 cm	default
η	areal fraction of cracks in foundation/wall	0.01	default

Other Parameters for Soil Vapor to Enclosed Space

Parameter		Default Value	Required
L _s	depth to subsurface soil sources from the enclosed space foundation	1 cm	option
L _B	enclosed space volume/infiltration area ratio	250 cm *	option
ER (s-1)	enclosed space air exchange rate	0.000185 *	default
L _{crack}	enclosed space foundation or wall thickness	15 cm	default
η	areal fraction of cracks in foundation/wall	0.01	default

*These values are an average of residential and nonresidential factors.

Soil Leaching to Groundwater

Parameter		Default Value	Required
δ	groundwater mixing zone	2 m	default

Building Parameters for Iowa Tier 2

Parameter		Residential	Nonresidential
ER (s-1)	enclosed space air exchange rate	0.00014	0.00023
L _B	enclosed space volume/infiltration area ratio	200 cm	300 cm

Other Parameters

For Tier 2, the following are the same as Tier 1 values (refer to Appendix A): chemical-specific parameters, slope factors and reference doses, and exposure factors (except for those listed below).

Exposure Factors for Tier 2 Groundwater Vapor to Enclosed Space Modeling:

Potential Residential: use residential exposure and residential building parameters.

Potential Nonresidential: use nonresidential exposure and nonresidential building parameters.

Diesel and Waste Oil

Diesel and Waste Oil			Chemical-Specific Values for Tier 1			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	150	0.012	0.12	1.2
		potential	150	1.2	12.0	NA
	Groundwater Vapor to Enclosed Space	all	4,440	NA	NA	NA
	Groundwater to Plastic Water Line	all	150	1.2	12.0	NA
	Surface Water	all	150	1.2	12.0	NA

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Diesel and Waste Oil			Chemical-Specific Values for Tier 1			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Soil (mg/kg)	Soil Leaching to Groundwater	all	7.6	NA	NA	NA
	Soil Vapor to Enclosed Space	all	95	NA	NA	NA
	Soil to Plastic Water Line	all	21	NA	NA	NA

Due to difficulties with analytical methods for the four individual chemicals listed in the above table, Total Extractable Hydrocarbon (TEH) default values were calculated for each chemical, using the assumption that diesel contains 0.2% naphthalene, 0.001% benzo(a)pyrene, 0.001% benz(a)anthracene, and 0.001% chrysene. Resulting TEH Default Values are shown in the following table.

Diesel			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	75,000	1,200	12,000	120,000
		potential	75,000	120,000	1,200,000	NA
	Groundwater Vapor to Enclosed Space	all	2,200,000	NA	NA	NA
	Groundwater to Plastic Water Line	all	75,000	120,000	1,200,000	NA
	Surface Water	all	75,000	120,000	1,200,000	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	3,800	NA	NA	NA
	Soil Vapor to Enclosed Space	all	47,500	NA	NA	NA
	Soil to Plastic Water Line	all	10,500	NA	NA	NA

The lowest TEH default value for each pathway (shown as a shaded box) was used in the Tier 1 Table.

Due to difficulties with analytical methods for the four individual chemicals, Total Extractable Hydrocarbon (TEH) default values were calculated for each chemical, using the assumption that waste oil contains no naphthalene, 0.003% benzo(a)pyrene, 0.003% benz(a)anthracene, and 0.003% chrysene. Resulting TEH Default Values are shown in the following table.

Waste Oil			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	NA	400	4,000	40,000
		potential	NA	40,000	400,000	NA
Groundwater (ug/L)	Groundwater Vapor to Enclosed Space	all	NA	NA	NA	NA
	Groundwater to Plastic Water Line	all	NA	40,000	400,000	NA
	Surface Water	all	NA	40,000	400,000	NA

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Waste Oil			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Soil (mg/kg)	Soil Leaching to Groundwater	all	NA	NA	NA	NA
	Soil Vapor to Enclosed Space	all	NA	NA	NA	NA
	Soil to Plastic Water Line	all	NA	NA	NA	NA

The lowest TEH default value for each pathway (shown as a shaded box) was used in the Tier 1 Table.

Appendix B-1 – Tier 2 Equations and Parameter Values (Old Model)

All Tier 1 equations and parameters apply at Tier 2 except as specified below.

Equation for Tier 2 Groundwater Contaminant Transport Model

$$C(x) = C_s \exp \left(\frac{x}{2\alpha_x} \left[1 - \sqrt{1 + \frac{4\lambda\alpha_x}{u}} \right] \right) \operatorname{erf} \left(\frac{S_w}{4\sqrt{\alpha_y x}} \right) \operatorname{erf} \left(\frac{S_d}{4\sqrt{\alpha_z x}} \right)$$

Variable definitions

x: distance in the x direction downgradient from the source

erf(): the error function

C(x): chemical concentration in groundwater at x

C_s: Source concentration in groundwater (groundwater concentration at x=0)

S_w: width of the source (perpendicular to x)

S_d: vertical thickness of the source

u: groundwater velocity (pore water velocity); u=Ki/θe

K: hydraulic conductivity

i: groundwater head gradient

θe: effective porosity

λ: first-order decay coefficient, chemical specific

α_x, α_y, α_z: dispersivities in the x, y and z directions, respectively

For the following lists of parameters, one of three is required: site-specific measurements, defaults or the option of either (which means the default may be used or replaced with a site-specific measurement).

Soil parameters

Parameter		Default Value	Required
ρ _s	soil bulk density	1.86 g/cm ³	option
f _{oc}	fraction organic carbon in the soil	0.01 kg-C/kg-soil	option
θ _T	total soil porosity	0.3cm ³ -voids/cm ³ -soil	option
θ _{as}	volumetric air content in vadose zone	0.2cm ³ -air/cm ³ -soil	default
θ _{ws}	volumetric water content in vadose zone	0.1cm ³ -H ₂ O/cm ³ -soil	default
θ _{acrack}	volumetric air content in foundation/wall cracks	0.2cm ³ -air/cm ³ -soil	default
θ _{wcrack}	volumetric water content in foundation/wall cracks	0.1cm ³ -H ₂ O/cm ³ -soil	default
I	infiltration rate of water through soil	7 cm/year	default

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If the total porosity is measured, assume 1/3 is air filled and 2/3 is water filled for determining the water and air fraction in the vadose zone soil and floor cracks.

Groundwater Transport Modeling Parameters

Parameter		Default Value	Required
K	hydraulic conductivity	16060 cm/year	site-specific
i	groundwater head gradient	0.01 cm/cm	site-specific
S_w	width of the source	use procedure specified in 135.10(2)	site-specific
S_d	vertical thickness of the source	3 m	default
α_x	dispersivity in the x direction	0.1x	default
α_y	dispersivity in the y direction	$0.33\alpha_x$	default
α_z	dispersivity in the z direction	$0.05\alpha_x$	default
θ_e	effective porosity	0.1	default

where $u = Ki/\theta_e$

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Groundwater Transport Modeling Parameters (continued)

First-order Decay Coefficients

Chemical	Default Value λ (d-1)	Required
Benzene	0.0005	default
Toluene	0.0007	default
Ethylbenzene	0.00013	default
Xylenes	0.0005	default
Naphthalene	0.00013	default
Benzo(a)pyrene	0	default
Benz(a)anthracene	0	default
Chrysene	0	default

Other Parameters for Groundwater Vapor to Enclosed Space

Parameter		Default Value	Required
L _{gw}	depth to groundwater from the enclosed space foundation	1 cm	option
L _B	enclosed space volume/infiltration area ratio	200 cm	option
ER (s-1)	enclosed space air exchange rate	0.00014	default
L _{crack}	enclosed space foundation or wall thickness	15 cm	default
η	areal fraction of cracks in foundation/wall	0.01	default

Other Parameters for Soil Vapor to Enclosed Space

Parameter		Default Value	Required
L _s	depth to subsurface soil sources from the enclosed space foundation	1 cm	option
L _B	enclosed space volume/infiltration area ratio	250 cm *	option
ER (s-1)	enclosed space air exchange rate	0.000185 *	default
L _{crack}	enclosed space foundation or wall thickness	15 cm	default
η	areal fraction of cracks in foundation/wall	0.01	default

*These values are an average of residential and nonresidential factors.

Soil Leaching to Groundwater

Parameter		Default Value	Required
δ	groundwater mixing zone	2 m	default

Building Parameters for Iowa Tier 2

Parameter		Residential	Nonresidential
ER (s-1)	enclosed space air exchange rate	0.00014	0.00023
L _B	enclosed space volume/infiltration area ratio	200 cm	300 cm

Other Parameters

For Tier 2, the following are the same as Tier 1 values (refer to Appendix A): chemical-specific parameters, slope factors and reference doses, and exposure factors (except for those listed below).

Exposure Factors for Tier 2 Groundwater Vapor to Enclosed Space Modeling:

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Potential Residential: use residential exposure and residential building parameters.

Potential Nonresidential: use nonresidential exposure and nonresidential building parameters.

Diesel and Waste Oil

Diesel and Waste Oil			Chemical-Specific Values for Tier 1			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a)pyrene	Benz(a)anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	150	0.012	0.12	1.2
		potential	150	1.2	12.0	NA
	Groundwater Vapor to Enclosed Space	all	4,440	NA	NA	NA
	Groundwater to Plastic Water Line	all	150	1.2	12.0	NA
	Surface Water	all	150	1.2	12.0	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	7.6	NA	NA	NA
	Soil Vapor to Enclosed Space	all	95	NA	NA	NA
	Soil to Plastic Water Line	all	21	NA	NA	NA

Due to difficulties with analytical methods for the four individual chemicals listed in the above table, Total Extractable Hydrocarbon (TEH) default values were calculated for each chemical, using the assumption that diesel contains 0.2% naphthalene, 0.001% benzo(a)pyrene, 0.001% benz(a)anthracene, and 0.001% chrysene. Resulting TEH Default Values are shown in the following table.

Diesel			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a)pyrene	Benz(a)anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	75,000	1,200	12,000	120,000
		potential	75,000	120,000	1,200,000	NA
	Groundwater Vapor to Enclosed Space	all	2,200,000	NA	NA	NA
	Groundwater to Plastic Water Line	all	75,000	120,000	1,200,000	NA
	Surface Water	all	75,000	120,000	1,200,000	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	3,800	NA	NA	NA
	Soil Vapor to Enclosed Space	all	47,500	NA	NA	NA
	Soil to Plastic Water Line	all	10,500	NA	NA	NA

The lowest TEH default value for each pathway (shown as a shaded box) was used in the Tier 1 Table.

Due to difficulties with analytical methods for the four individual chemicals, Total Extractable Hydrocarbon (TEH) default values were calculated for each chemical, using the assumption that waste oil contains no naphthalene, 0.003% benzo(a)pyrene, 0.003% benz(a)anthracene, and 0.003% chrysene. Resulting TEH Default Values are shown in the following table.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Waste Oil			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	NA	400	4,000	40,000
		potential	NA	40,000	400,000	NA
Groundwater (ug/L)	Groundwater Vapor to Enclosed Space	all	NA	NA	NA	NA
	Groundwater to Plastic Water Line	all	NA	40,000	400,000	NA
	Surface Water	all	NA	40,000	400,000	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	NA	NA	NA	NA
	Soil Vapor to Enclosed Space	all	NA	NA	NA	NA
	Soil to Plastic Water Line	all	NA	NA	NA	NA

The lowest TEH default value for each pathway (shown as a shaded box) was used in the Tier 1 Table.

[Filed 6/12/08, effective 8/6/08]

[Published 7/2/08]

EDITOR'S NOTE:For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6877B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 234.6, 239B.4(6), and 249A.4, the Department of Human Services amends Chapter 41, "Granting Assistance," Chapter 75, "Conditions of Eligibility," and Chapter 170, "Child Care Services," Iowa Administrative Code.

Legislation in 2007 Iowa Acts, chapter 161, section 1, provides that, for tax year 2007 and thereafter, any state earned income tax credit (EITC) in excess of a person's tax liability is refundable. Department policies for determining Family Investment Program (FIP) and Medicaid eligibility already specify that federal earned income tax credits are exempt as income, regardless of whether the payments are received with the regular paychecks or as a lump sum with the tax refund. However, the Department's rules have not mentioned state income tax refunds, since previously the state earned income tax credit was nonrefundable.

These amendments clarify that for FIP eligibility and eligibility under a Family Medical Assistance Program (FMAP)-related Medicaid coverage group, both federal and state EITC payments are:

- Exempt as income; and
- Exempt as a resource in the month of receipt and the following month.

These amendments also establish the same income policy for the Child Care Assistance Program. (Resources are not considered in determining eligibility for Child Care Assistance.)

These amendments do not provide for waivers in specified situations, since exempting these payments is a benefit to clients who receive them. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on April 9, 2008, as **ARC 6685B**. Notice of Intended Action to solicit comment on that submission was published on the same date as **ARC 6686B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted these amendments on June 11, 2008.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code sections 237A.13, 239B.7, and 249A.4 and Iowa Code Supplement section 422.12B.

These amendments shall become effective August 6, 2008, at which time the Adopted and Filed Emergency rules are rescinded.

The following amendments are adopted.

ITEM 1. Amend paragraph **41.26(1)“I”** as follows:

l. ~~Earned~~ Federal or state earned income tax credit payments in the month of receipt and the following month, regardless of whether these payments are received with the regular paychecks or as a lump sum with the federal or state income tax refund.

ITEM 2. Amend paragraph **41.27(7)“g”** as follows:

g. ~~Earned~~ Federal or state earned income tax credit.

ITEM 3. Amend paragraph **75.56(1)“I”** as follows:

l. ~~Earned~~ Federal or state earned income tax credit payments in the month of receipt and the following month, regardless of whether these payments are received with the regular paychecks or as a lump sum with the federal or state income tax refund.

ITEM 4. Amend paragraph **75.57(7)“f”** as follows:

f. ~~Earned~~ Federal or state earned income tax credit.

ITEM 5. Adopt the following **new** subparagraph **170.2(1)“d”(28)**:

(28) Federal or state earned income tax credit.

[Filed 6/11/08, effective 8/6/08]

[Published 7/2/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6887B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” and Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

These amendments specify the qualifications required for personnel working in area education agencies, local education agencies, and infant and toddler programs to bill Medicaid for services. The Centers for Medicare and Medicaid Services has ruled that audiologists and speech-language pathologists must have a license from the Iowa Board of Speech Pathology and Audiology in order to bill for audiological or speech-language services. Personnel with endorsements from the Board of Educational Examiners only will not qualify as Medicaid providers under this policy.

These amendments do not provide for waivers in specified situations. The Department does not have authority to waive federal regulations.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on April 23, 2008, as **ARC 6748B**. The Department received no comments on the Notice of Intended Action.

The Department has modified the amendments published under Notice of Intended Action in subrule 77.28(6), paragraph 77.43(1)“f,” and paragraph 77.44(1)“f” to add “Licensed by the Iowa board of optometry as an optometrist pursuant to 645—Chapter 180” to the permitted qualifications for personnel providing vision services. Senate File 2251, enacted by the 82nd General Assembly and effective July 1, 2009, requires area education agencies to make every effort to provide vision screening services to children who are two through four years of age, in collaboration with local community organizations.

The Council on Human Services adopted these amendments on June 11, 2008.

These amendments are intended to implement Iowa Code section 249A.4.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments shall become effective on September 1, 2008.

The following amendments are adopted.

ITEM 1. Amend rule 441—77.28(249A) as follows:

441—77.28(249A) Area education agencies. An area education agency is eligible to participate in the Medicaid program when it has a plan for providing comprehensive special education programs and services approved by the Iowa department of education. Covered services shall be provided by personnel who are licensed, endorsed, or registered as provided in this rule and shall be within the scope of the applicable license, endorsement, or registration.

77.28(1) Personnel providing audiological or speech-language services shall be licensed by the Iowa board of speech pathology and audiology as a speech pathologist or audiologist pursuant to 645—Chapters 299, 300 and 303 through 305.

77.28(2) Personnel providing physical therapy shall be licensed by the Iowa board of physical and occupational therapy as a physical therapist pursuant to 645—Chapters 199 through 204.

77.28(3) Personnel providing occupational therapy shall be licensed by the Iowa board of physical and occupational therapy as an occupational therapist pursuant to 645—Chapters 205 through 210.

77.28(4) Personnel providing psychological evaluations and counseling or psychotherapy services shall be:

a. Endorsed by the Iowa board of educational examiners as a school psychologist pursuant to rule 282—15.11(272);

b. Licensed by the Iowa board of psychology as a psychologist pursuant to 645—Chapters 239 through 243;

c. Licensed by the Iowa board of social work as a social worker pursuant to 645—Chapters 279 through 284;

d. Licensed by the Iowa board of medicine as a physician pursuant to 653—Chapters 9 through 11; or

e. Registered by the Iowa nursing board as an advanced registered nurse practitioner pursuant to 655—Chapter 7.

77.28(5) Personnel providing nursing services shall be licensed by the Iowa nursing board as a registered or licensed practical nurse pursuant to 655—Chapters 3 through 6.

77.28(6) Personnel providing vision services shall be:

a. Licensed by the Iowa nursing board as a registered or licensed practical nurse pursuant to 655—Chapters 3 through 6;

b. Licensed by the Iowa board of medicine as a physician pursuant to 653—Chapters 9 through 11; or

c. Licensed by the Iowa board of optometry as an optometrist pursuant to 645—Chapter 180.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 2. Rescind subrule 77.43(1) and adopt the following **new** subrule in lieu thereof:

77.43(1) Licensure. Covered services shall be provided by personnel who are licensed, endorsed, registered, recognized, or qualified as provided in this subrule and shall be within the scope of the applicable license, endorsement, registration, recognition, or qualification.

a. Personnel providing audiological or speech-language services shall be licensed by the Iowa board of speech pathology and audiology as a speech pathologist or audiologist pursuant to 645—Chapters 299, 300 and 303 through 305.

b. Personnel providing physical therapy shall be licensed by the Iowa board of physical and occupational therapy as a physical therapist pursuant to 645—Chapters 199 through 204.

c. Personnel providing occupational therapy shall be licensed by the Iowa board of physical and occupational therapy as an occupational therapist pursuant to 645—Chapters 205 through 210.

d. Personnel providing psychological evaluations and counseling or psychotherapy services shall be:

(1) Endorsed by the Iowa board of educational examiners as a school psychologist pursuant to rule 282—15.11(272);

(2) Licensed by the Iowa board of psychology as a psychologist pursuant to 645—Chapters 239 through 243;

HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) Licensed by the Iowa board of social work as a social worker pursuant to 645—Chapters 279 through 284;

(4) Licensed by the Iowa board of medicine as a physician pursuant to 653—Chapters 9 through 11; or

(5) Registered by the Iowa nursing board as an advanced registered nurse practitioner pursuant to 655—Chapter 7.

e. Personnel providing nursing services shall be licensed by the Iowa nursing board as a registered or licensed practical nurse pursuant to 655—Chapters 3 through 6.

f. Personnel providing vision services shall be:

(1) Licensed by the Iowa nursing board as a registered or licensed practical nurse pursuant to 655—Chapters 3 through 6;

(2) Licensed by the Iowa board of medicine as a physician pursuant to 653—Chapters 9 through 11; or

(3) Licensed by the Iowa board of optometry as an optometrist pursuant to 645—Chapter 180.

g. Developmental services shall be provided by personnel who meet standards established pursuant to department of education rule 281—120.19(34CFR303).

h. Medical transportation shall be provided by licensed drivers.

i. Other services shall be provided by staff who are:

(1) Recognized as a special education paraprofessional pursuant to department of education rule 281—41.403(256B);

(2) Endorsed by the Iowa board of educational examiners as a school psychologist pursuant to rule 282—15.11(272);

(3) Endorsed by the Iowa board of educational examiners as a speech-language pathologist pursuant to rule 282—15.12(272);

(4) Endorsed by the Iowa board of educational examiners as an orientation and mobility specialist pursuant to rule 282—15.15(272);

(5) Endorsed by the Iowa board of educational examiners as a school occupational therapist pursuant to rule 282—15.16(272);

(6) Endorsed by the Iowa board of educational examiners as a school physical therapist pursuant to rule 282—15.17(272);

(7) Endorsed by the Iowa board of educational examiners as a special education nurse pursuant to rule 282—15.18(272);

(8) Endorsed by the Iowa board of educational examiners as a school social worker pursuant to rule 282—15.19(272);

(9) Licensed by the Iowa nursing board as a registered or licensed practical nurse pursuant to 655—Chapters 3 through 6; or

(10) Licensed by the Iowa board of medicine as a physician pursuant to 653—Chapters 9 through 11.

ITEM 3. Rescind subrule 77.44(1) and adopt the following new subrule in lieu thereof:

77.44(1) Licensure. Covered services shall be provided by personnel who are licensed, endorsed, registered, recognized, or qualified as provided in this subrule and shall be within the scope of the applicable license, endorsement, registration, recognition, or qualification.

a. Personnel providing audiological or speech-language services shall be licensed by the Iowa board of speech pathology and audiology as a speech pathologist or audiologist pursuant to 645—Chapters 299, 300 and 303 through 305.

b. Personnel providing physical therapy shall be licensed by the Iowa board of physical and occupational therapy as a physical therapist pursuant to 645—Chapters 199 through 204.

c. Personnel providing occupational therapy shall be licensed by the Iowa board of physical and occupational therapy as an occupational therapist pursuant to 645—Chapters 205 through 210.

d. Personnel providing psychological evaluations and counseling or psychotherapy services shall be:

(1) Endorsed by the Iowa board of educational examiners as a school psychologist pursuant to rule 282—15.11(272);

(2) Licensed by the Iowa board of psychology as a psychologist pursuant to 645—Chapters 239 through 243;

HUMAN SERVICES DEPARTMENT[441](cont'd)

(3) Licensed by the Iowa board of social work as a social worker pursuant to 645—Chapters 279 through 284;

(4) Licensed by the Iowa board of medicine as a physician pursuant to 653—Chapters 9 through 11; or

(5) Registered by the Iowa nursing board as an advanced registered nurse practitioner pursuant to 655—Chapter 7.

e. Personnel providing nursing services shall be licensed by the Iowa nursing board as a registered or licensed practical nurse pursuant to 655—Chapters 3 through 6.

f. Personnel providing vision services shall be:

(1) Licensed by the Iowa nursing board as a registered or licensed practical nurse pursuant to 655—Chapters 3 through 6;

(2) Licensed by the Iowa board of medicine as a physician pursuant to 653—Chapters 9 through 11; or

(3) Licensed by the Iowa board of optometry as an optometrist pursuant to 645—Chapter 180.

g. Developmental services shall be provided by personnel who meet standards established pursuant to department of education rule 281—120.19(34CFR303).

h. Medical transportation shall be provided by licensed drivers.

i. Other services shall be provided by staff who are:

(1) Recognized as a special education paraprofessional pursuant to department of education rule 281—41.403(256B);

(2) Endorsed by the Iowa board of educational examiners as a school psychologist pursuant to rule 282—15.11(272);

(3) Endorsed by the Iowa board of educational examiners as a speech-language pathologist pursuant to rule 282—15.12(272);

(4) Endorsed by the Iowa board of educational examiners as an orientation and mobility specialist pursuant to rule 282—15.15(272);

(5) Endorsed by the Iowa board of educational examiners as a school occupational therapist pursuant to rule 282—15.16(272);

(6) Endorsed by the Iowa board of educational examiners as a school physical therapist pursuant to rule 282—15.17(272);

(7) Endorsed by the Iowa board of educational examiners as a special education nurse pursuant to rule 282—15.18(272);

(8) Endorsed by the Iowa board of educational examiners as a school social worker pursuant to rule 282—15.19(272);

(9) Licensed by the Iowa nursing board as a registered or licensed practical nurse pursuant to 655—Chapters 3 through 6; or

(10) Licensed by the Iowa board of medicine as a physician pursuant to 653—Chapters 9 through 11.

ITEM 4. Amend rule **441—78.32(249A)**, introductory paragraph, as follows:

441—78.32(249A) Area education agencies. Payment will be made for physical therapy, occupational therapy, psychological evaluations and counseling, psychotherapy, speech-language therapy, and audiological, nursing, and vision services provided by an area education agency (AEA). ~~These services shall be provided by personnel who meet standards as set forth in department of education rules 281—41.8(256B,34CFR300) to 281—41.10(256B) to the extent that their certification or license allows them to provide these services.~~ Services shall be provided directly by the AEA or through contractual arrangement with the AEA.

[Filed 6/11/08, effective 9/1/08]

[Published 7/2/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/2/08.

ARC 6895B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services rescinds Chapter 168, "Child Care Grants Programs," and adopts new Chapter 168, "Child Care Expansion Programs," Iowa Administrative Code.

These rules update, clarify, and refocus policy on funding for child care programs. Funding for "wrap-around" child care will be available only to programs that provide care before and after a "core" program that serves at-risk early childhood populations. Core programs include Head Start, Shared Visions, Title I preschool, early childhood special education, and Even Start. Child care programs that show they are providing continuity of services for children in a core program, without changing the child's location, staff support, services, schedule, and care, will be given first consideration.

The Department expects funding for wrap-around child care to be available annually since wrap-around programs are funded with discretionary funds received under the federal Child Care and Development Block Grant. When appropriated, funding will also be available to programs that expand access to child care before and after school.

These rules are consistent with the Department's current policies for contracting. The limit on the number of children served is removed, thereby allowing contractors to serve children in more than one classroom and at more than one service site under one contract. The scoring system is replaced by weighted selection criteria that will be set forth in the request for proposals. The Department reserves the right not to contract for all available funds if there are insufficient eligible proposals.

These rules do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these rules was published in the Iowa Administrative Bulletin on April 23, 2008, as **ARC 6725B**. The Department received one comment, which was in support of the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these rules on June 11, 2008.

These rules are intended to implement Iowa Code section 234.6.

These rules shall become effective on September 1, 2008.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 168] is being omitted. These rules are identical to those published under Notice as **ARC 6725B**, IAB 4/23/08.

[Filed 6/12/08, effective 9/1/08]

[Published 7/2/08]

[For replacement pages for IAC, see IAC Supplement 7/2/08.]

ARC 6866B**RACING AND GAMING COMMISSION[491]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Iowa Racing and Gaming Commission hereby adopts amendments to Chapter 6, "Occupational and Vendor Licensing," Chapter 9, "Harness Racing," Chapter 11, "Gambling Games," and Chapter 12, "Accounting and Cash Control," Iowa Administrative Code.

Item 1 adds a definition for "occupation."

Items 2 and 3 replace the words "categories" and "class" with "occupations" and "occupation," respectively.

Item 4 changes the list of offenses that are automatic disqualifiers for an occupational license.

Items 5 to 8 update existing rules to correspond with the national uniform rules of racing.

RACING AND GAMING COMMISSION[491](cont'd)

Item 9 allows the Administrator or a Commission representative to require additional testing on a gambling game.

Item 10 removes the reference to a contest.

Item 11 allows a player in a game of twenty-one to handle the cards consistent with rules of other table games.

Items 12 and 13 implement changes to conform the rules to industry standards.

These amendments were published under Notice of Intended Action in the March 26, 2008, Iowa Administrative Bulletin as **ARC 6678B**. One change has been made since the Notice of Intended Action. Item 4 has been revised to add theft or fraudulent practice in excess of \$500 as an automatic disqualifier in paragraph 6.5(1)“d.” Paragraph “d” now reads as follows:

“d. A license shall be denied if, within the last five years, an applicant has had a felony conviction or an offense involving theft or fraudulent practice in excess of \$500, including a conviction involving the entry of a deferred judgment and adjudications of delinquency. If the conviction did not occur within the last five years, a license shall not be issued unless the commission representative determines that sufficient evidence of rehabilitation exists.”

A public hearing was held on April 15, 2008. No comments were received.

These amendments will become effective August 6, 2008.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 6, 9, 11, 12] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 6678B**, IAB 3/26/08.

[Filed 6/6/08, effective 8/6/08]

[Published 7/2/08]

[For replacement pages for IAC, see IAC Supplement 7/2/08.]

ARC 6890B**TRANSPORTATION DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on June 11, 2008, adopted amendments to Chapter 122, "Keep Iowa Beautiful Program," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the April 23, 2008, Iowa Administrative Bulletin as **ARC 6722B**.

The amendments correct contact information, tie the valuation of volunteer labor to the current state minimum wage rate in effect when the application is due, and clarify the project selection process.

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 314.

TRANSPORTATION DEPARTMENT[761](cont'd)

These amendments will become effective August 6, 2008.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [122.2, 122.5(4) to 122.5(10), 122.7(3)] is being omitted. These amendments are identical to those published under Notice as **ARC 6722B**, IAB 4/23/08.

[Filed 6/12/08, effective 8/6/08]

[Published 7/2/08]

[For replacement pages for IAC, see IAC Supplement 7/2/08.]

AGENCY	RULE	DELAY
PUBLIC SAFETY DEPARTMENT[661]	141.1, 141.4(1), 141.4(3), 141.5(9)“d,” 141.10, 141.10(1) [IAB 2/13/08, ARC 6591B]	Effective date of April 1, 2008, delayed 70 days by the Administrative Rules Review Committee at its meeting held March 7, 2008. [Pursuant to §17A.4(6)] At its meeting held June 9, 2008, the Committee delayed the effective date of April 1, 2008, until the adjournment of the 2009 Session of the General Assembly. [Pursuant to §17A.8(9)]